

5
No. 97-428

Supreme Court, U.S.

FILED

JAN 9 1998

IN THE
Supreme Court of the United States

OCTOBER TERM, 1997

AIR LINE PILOTS ASSOCIATION,
Petitioner,

v.

ROBERT A. MILLER, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

JOINT APPENDIX

JERRY D. ANKER *
CLAY WARNER
Air Line Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 797-4087
Counsel for Petitioner

* Counsel of Record

RAYMOND J. LAJEUNESSE, JR.*
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160
(703) 321-8510

PHILIP F. HUDOCK
P.O. Box 3796
Reston, VA 20195
(703) 757-9577
Counsel for Respondents

PETITION FOR CERTIORARI FILED SEPTEMBER 5, 1997

CERTIORARI GRANTED NOVEMBER 26, 1997



139 pp

TABLE OF CONTENTS

	Page
Relevant Docket Entries from the United States District Court for the District of Columbia, Civil Action No. 91-3161	1
Relevant Docket Entries from the United States Court of Appeals for the District of Columbia Circuit, No. 96-7033	7
Complaint (including excerpts from exhibit 1; all other exhibits omitted), filed December 12, 1991	10
Answer of Defendant Air Line Pilots Association, filed January 23, 1992	36
Order granting motion for leave to file amendments to complaint, filed August 2, 1993	45
Amendment to Complaint (excerpts), filed August 2, 1993	46
Motion to Intervene (attachment omitted), filed January 10, 1994	49
Motion for Preliminary Injunction (including exhibits), filed January 21, 1994	54
Declaration of Elizabeth Ginsburg (including exhibits), filed January 21, 1994	63
Supplement to Motion to Intervene (attachment omitted), filed January 21, 1994	109
Order denying motion for preliminary injunction, filed January 24, 1994	111
Order granting in part and denying in part motion to intervene, filed December 8, 1994	115
Second Amendment to the Complaint, filed December 8, 1994	118
Transcript, American Arbitration Association Hearing In Re Air Line Pilots Association (Agency Fee Challenges—1992) (excerpts), filed February 2, 1995.....	134

TABLE OF CONTENTS—Continued

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

	Page
Opinion, U.S. Court of Appeals for the District of Columbia Circuit, dated March 14, 1997	1a
Memorandum Opinion, U.S. District Court for the District of Columbia, dated August 30, 1995.....	21a
Order, U.S. District Court for the District of Columbia, dated August 30, 1995	40a
Order, U.S. District Court for the District of Columbia, dated January 24, 1996	41a
Memorandum Opinion, U.S. District Court for the District of Columbia, dated April 28, 1995	44a
Order, U.S. District Court for the District of Columbia, dated April 28, 1995	60a
Memorandum Opinion, U.S. District Court for the District of Columbia, dated August 2, 1993.....	62a
Amended Opinion and Award of Arbitrator Louis Aronin, dated September 30, 1994	71a
Supplemental Opinion and Award of Arbitrator Louis Aronin, dated September 30, 1994	158a
Order, U.S. Court of Appeals for the District of Columbia Circuit, dated June 9, 1997	162a
Order, U.S. Court of Appeals for the District of Columbia Circuit, dated June 9, 1997	164a

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1:91CV3161

Filed: 12/12/91

MILLER, *et al.*,

v.

AIR LINE PILOTS ASSO., *et al.*

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
12/12/91	1	COMPLAINT filed summons (4) issued; EXHIBITS (3) (adc) [Entry date 12/18/91]
12/12/91	2	MOTION by plaintiff ROBERT A. MILLER for preliminary injunction (adc) [Entry date 12/18/91]
12/31/91	7	ORDER by Judge Norma H. Johnson : denying motion for preliminary injunction [2-1] by ROBERT A. MILLER (N) (cjp) [Entry date 01/07/92]
1/21/92	13	MEMORANDUM OPINION by Judge Norma H. Johnson (N) (dot) [Entry date 01/30/92]
1/23/92	10	ANSWER to the complaint for defendant AIR LINE PILOTS ASSO (dot) [Entry date 01/24/92]
2/21/92	—	STATUS HEARING before Judge Norma H. Johnson : discovery due 6/30/92 ; dispositive motions due 7/31/92 ; trial set for 2:00 11/17/92 ; case referred to Magistrate Judge for discovery and pretrial; pretrial to be held by 11/6/92. reporter: G. Williams (ab)

DATE	PROCEEDINGS
7/29/92	22 MOTION filed by defendant AIR LINE PILOTS ASSO for summary judgment attachments (5) (dmb) [Entry date 07/30/92]
7/31/92	23 MOTION filed by plaintiff(s) for summary judgment attachments (6) (dmb) [Entry date 08/03/92]
10/8/92	37 MOTION filed by plaintiff(s) ROBERT A. MILLER, plaintiff(s) DONALD PEDRAZZINI, plaintiff(s) KENNETH SHACKELFORD, plaintiff(s) ROBERT V. ZIMINSKY, plaintiff(s) BRUCE R. BOOHER for leave to file amendment to complaint EXHIBITS (amendment to complaint) (dcn) [Entry date 10/09/92]
2/19/93	55 MOTION filed by plaintiff(s) to re-open discovery (dmb) [Entry date 02/23/93]
8/2/93	58 ORDER by Judge Norma H. Johnson: granting motion to re-open discovery [55-1] by ROBERT A. MILLER, DONALD PEDRAZZINI, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY, BRUCE R. BOOHER (N) (bm)
8/2/93	60 MEMORANDUM OPINION by Judge Norma H. Johnson (N) (ab) [Entry date 08/03/93]
8/2/93	61 ORDER by Judge Norma H. Johnson : granting motion for leave to file amendment to complaint [37-1] by ROBERT A. MILLER, DONALD PEDRAZZINI, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY, BRUCE R. BOOHER; directing that the amendment shall be Exhibit 1 of the plaintiff's motion which is deemed filed and served on the date of entry of this Order (N) (ab) [Entry date 08/03/93]

DATE	PROCEEDINGS
8/2/93	68 AMENDMENT TO COMPLAINT by plaintiff(s) adding amending complaint [1-1] (dmb) [Entry date 10/21/93]
8/3/93	62 NOTICE by defendant AIR LINE PILOTS ASSO of suggestion of mootness of issues relating to audit of SGNE (dmb) [Entry date 08/04/93]
1/10/94	72 MOTION filed for TED M. ABBOTT and 141 pilots as plaintiffs to intervene; EXHIBIT (SECOND AMENDMENT TO THE COMPLAINT) (dmb) [Entry date 01/11/94]
1/21/94	73 MOTION filed by plaintiff(s) BRUCE R. BOOHER, plaintiff(s) ROBERT V. ZIMINSKY, plaintiff(s) KENNETH SHACKELFORD, plaintiff(s) DONALD PEDRAZZINI, plaintiff(s) ROBERT A. MILLER for preliminary injunction; exhibits (4) (cjp) [Entry date 01/26/94]
1/21/94	75 RESPONSE by defendant AIR LINE PILOTS ASSO in opposition to motion for preliminary injunction [73-1] by ROBERT A. MILLER, DONALD PEDRAZZINI, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY, BRUCE R. BOOHER.; attachments (A-J) (dmb) [Entry date 01/26/94] [Edit date 01/31/94]
1/21/94	77 SUPPLEMENTAL MEMORANDUM to motion for TED M. ABBOTT and 141 pilots as plaintiffs to intervene [72-1] (dmb) [Entry date 01/27/94]
1/24/94	142 ORDER by Judge Norma H. Johnson : denying motion for preliminary injunction [73-1] by ROBERT A. MILLER, DONALD PEDRAZZINI, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY, BRUCE R. BOOHER (N) (jeb) [Entry date 03/13/96]

DATE	PROCEEDINGS
10/17/94 82	NOTICE OF FILING by defendant AIR LINE PILOTS ASSOCIATION of Arbitration Award; attachments (2). (tth) [Entry date 10/18/94]
19/27/94 83	MOTION filed by plaintiff DONALD PEDRAZZINI to withdraw as a party plaintiff (ted) [Entry date 10/28/94]
11/23/94 —	STATUS HEARING held before Judge Norma H. Johnson : discovery due 2/10/95 ; dispositive motions due 3/17/95 ; trial set for 10:00 5/15/95 ; pretrial to be held on or before 5/1/95 Reporter: Gloria Williams (adc) [Entry date 11/28/94]
12/8/94 86	ORDER by Judge Norma H. Johnson : that defendant ALPA's suggestion of mootness be, and hereby is denied, the claims of plaintiff Donald Pedrazzini be, and hereby are, dismissed with prejudice and granting in part, denying in part motion for TED M. ABBOTT and 141 pilots as plaintiffs to intervene [72-1] (N) (adc) [Entry date 12/09/94]
12/8/94 88	INTERVENOR'S COMPLAINT by intervenor-plaintiff TED M. ABBOTT, et al., against defendant DELTA AIR LINES, INC, defendant AIR LINE PILOTS ASSO . (ted) [Entry date 12/20/94]
2/22/95 98	MOTION filed by defendant AIR LINE PILOTS ASSO for summary judgment; Exhibit (ted)
2/22/95 99	ADMINISTRATIVE RECORD by defendant AIR LINE PILOTS ASSO; Exhibits (32), Hearing Transcript (Vols. 1-3) (ted)
4/28/95 117	MEMORANDUM OPINION by Judge Norma H. Johnson (N) (adc)
4/28/95 118	ORDER by Judge Norma H. Johnson : granting motion for summary judgment [98-1] by AIR LINE PILOTS ASSO as to issues 1,2,3 & 4 as listed on page 3 of the Memorandum

DATE	PROCEEDINGS
	Opinion issued on this date. It is further ordered that the parties submit further briefing on issue number 5: memorandum by defendant ALPA shall be due within 14 days; memorandum by plaintiffs shall be due 14 days thereafter; there shall be no replies. It is further ordered that Bruce R. Booher be, and hereby is, dismissed sua sponte as a plaintiff in this action. (N) (adc)
5/12/95 121	MOTION filed by defendant DELTA AIR LINES, INC to dismiss as to defendant DELTA AIR LINES, INC (ted) [Entry date 05/15/95]
7/12/95 124	ORDER by Judge Norma H. Johnson : granting motion to dismiss as to defendant DELTA AIR LINES, INC [121-1] by DELTA AIR LINES, INC, (N) (adc) [Entry date 07/13/95]
8/30/95 128	ORDER by Judge Norma H. Johnson : granting motion for summary judgment [22-1] by AIR LINE PILOTS ASSO (N) (dbw) [Entry date 08/31/95]
8/30/95 129	MEMORANDUM OPINION by Judge Norma H. Johnson (N) (dbw) [Entry date 08/31/95]
9/15/95 130	MOTION filed by plaintiff ROBERT V. ZIMINSKY, plaintiff KENNETH SHACKELFORD, plaintiff ROBERT A. MILLER to alter judgment, or to amend judgment (ted) [Entry date 09/18/95]
1/24/96 135	ORDER by Judge Norma H. Johnson : denying motion to alter judgment [130-1] by ROBERT A. MILLER, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY, denying motion to amend judgment [130-2] by ROBERT A. MILLER, KENNETH SHACKELFORD, ROBERT V. ZIMINSKY (N) (adc) [Entry date 01/25/96]

DATE	PROCEEDINGS
2/22/96 138	NOTICE OF APPEAL by plaintiff ROBERT V. ZIMINSKY, plaintiff KENNETH SHACKELFORD, plaintiff ROBERT A. MILLER from order [135-1], order [128-1], order [124-1], order [118-1], order [86-1], order [76-1], order [59-1], order [58-1], order [7-1]. \$5.00 filing fee, \$100.00 docketing fee paid. Copy mailed to Jerry Anker. (tad) [Entry date 02/23/96]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

96-7033

MILLER, ROBERT A., *et al.*,

v.

AIR LINE PILOTS ASSN.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
2/27/96	CIVIL-PRIVATE CASE docketed. Notice of Appeal filed by Appellant's Robert A. Miller, et al. [183434-1] (wmw)
10/17/96	CLERK'S ORDER filed granting motion for substitution of personal representative of deceased plaintiff-appellant Walter W. Baitis with Gerda H. Baitis [226631-1] Granting motion terminate party filed by Delta Airln Inc [229488-1]. (cwc)
10/29/96	MOTION filed (5 copies) by Appellants Thomas R. Allen, John M. Boland, Bruce R. Booher and Eugene C. Conway to withdraw as parties (certificate of service dated 10/29/96) [STYLED AS "STIPULATION FOR DISMISSAL."] (cwc)
11/1/96	BRIEF filed by Appellant's Robert A. Miller, et al., [233339-1]. Copies: 15. Certificate of service date 11/1/96. (jth)
11/1/96	APPENDIX (VOLUMES I & II) filed by Appellants Robert A. Miller, et al., [233340-1]. Copies: 10. Certificate of service date 11/1/96. (jth)

DATE	PROCEEDINGS
11/1/96	EXHIBITS filed by Appellant's Robert A. Miller, et al., [STYLED AS APPENDIX VOLUME III] [233344-1]. Copies: 4. Certificate of service date 11/1/96. (jth)
11/8/96	CLERK'S ORDER filed granting motion to withdraw as appellants filed by Thomas R. Allen, John M. Boland, Bruce R. Booher and Eugene C. Conway [233878-1]. (cwc)
12/3/96	BRIEF filed by Appellee Air Line Pilots Assn [238466-1] . Copies: 15 . Certificate of service date 12/3/96 . (wmw)
12/17/96	REPLY BRIEF filed by Appellant's Robert A. Miller, et al., [241298-1]. Copies: 15. Certificate of service date 12/17/96. (wmw)
1/16/97	ORAL ARGUMENT HELD before Silberman, Williams, Rogers . (ddm)
3/14/97	JUDGMENT for the reasons in the accompanying opinion reversing [259036-1]. Before Judges Silberman, Williams, Rogers. (edb)
3/14/97	OPINION (19 pages) for the Court filed by Judge Silberman. (edb)
4/11/97	PETITION for rehearing [265528-1] and SUGGESTION, for rehearing in banc [265528-2] (19 copies) filed by Appellee Air Line Pilots Assn (c/s dated 4/11/97) (wmw)
4/22/97	CLERK'S ORDER filed that appellants respond hereto and do so on or before 5/07/97. (wmw)
5/6/97	OPPOSITION filed [270569-1] (5 copies) by Appellant's Robert A. Miller, et al., to the petition for rehearing and suggestion for rehearing in banc (certificate of service dated 5/6/97) (wmw)
6/10/97	PER CURIAM ORDER filed that the petition for rehearing be denied [265528-1]. (Mandate may issue on or after 6/18/97). Before Judges *Silber-

DATE	PROCEEDINGS
	man, *Williams, Rogers. A statement of Circuit Judge Silberman concurring in the denial of the petition, joined by Circuit Judge Williams, is attached. (wmw)
6/10/97	PER CURIAM ORDER, In Banc, filed that the suggestion for rehearing in banc be denied [265528-2]. Before Judges Edwards, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel, *Garland. *Circuit Judge Garland did not participate in this matter. (wmw)

[Filed Dec. 12, 1991]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 91 3161

ROBERT A. MILLER
1111B N.W. 133 Street
Vancouver, WA 98685;
DONALD PEDRAZZINI
741 Westminster Lane
Los Altos, CA 94022;
KENNETH SHACKELFORD
71 Thaynes Canyon Drive
Park City, UT 84060;
ROBERT V. ZIMINSKY
227 Campbell Mill Road
Mason, NH 03033; and
BRUCE R. BOOHER
4910 N. East Meadows Drive
Park City, UT 84060,
Plaintiffs,
v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
an unincorporated association
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036; and
DELTA AIR LINES, INC.,
a Delaware corporation
C.T. Corporation System,
Registered Agent
1025 Vermont Avenue, N.W.
Washington, D.C. 20005
Defendants.

COMPLAINT

CLASS ACTION FOR DECLARATORY,
EQUITABLE, AND INJUNCTIVE RELIEF

Plaintiffs are pilots who are currently employed by Defendant, Delta Air Lines, Inc. ("Delta"). Plaintiffs are either union members or former union members of Defendant, Air Line Pilots Association International ("ALPA"). Plaintiffs bring this Class Action challenging various aspects of a Railway Labor Act ("RLA") Union Security Agreement recently entered into between Delta and ALPA, which is to become effective on January 1, 1992. In support of this Complaint it is alleged as follows:

I. JURISDICTION

1. Jurisdiction lies in this Court pursuant to 28 U.S.C. Section 1331 (Federal question), 28 U.S.C. Section 1337 (regulating commerce), and 29 U.S.C. Section 412 ("LMRDA").

II. PARTIES

2. Defendant, Delta Air Lines, Inc. ("Delta"), is a Delaware corporation, which does business within the District of Columbia, and operates as a common carrier by air, engaged in interstate and foreign commerce. Pursuant to Section 201 of the Railway Labor Act ("RLA") (45 U.S.C. Section 181), Delta and its pilots and other employees are covered by the provisions of subchapter I (except Section 153) of the RLA (45 U.S.C. Section 151, *et seq.*) relating to applicable Federal Labor Law.

3. Defendant, Air Line Pilots Association International ("ALPA"), is an unincorporated association doing business in the District of Columbia, which maintains a principal office in that jurisdiction. ALPA is a "labor organization" (union) within the meaning of RLA. ALPA is the exclusive collective bargaining agent representing Delta's pilots and flight engineers relating to wages, hours, and working conditions, within the meaning of Section 2 of the RLA (45 U.S.C. Section 152).

4. Plaintiffs, Robert A. Miller, Donald Pedrazzini, Kenneth Shackelford, and Robert V. Ziminsky, are airline pilots currently employed by Delta. These Plaintiffs formerly were members of ALPA, but are not currently considered members in good standing, as defined by ALPA's Constitution and By-Laws. These Plaintiffs object to the Union Security Agreement, as described in this Complaint. These Plaintiffs shall be collectively referred to as the "Non-Union Pilots."

5. Plaintiff, Bruce R. Booher, is an airline pilot currently employed by Delta. Plaintiff Booher is a member of ALPA in good standing, as defined by ALPA's Constitution and By-Laws. This Plaintiff objects to the failure of ALPA to have a membership ballot prior to entry into a Union Security Agreement, as described in this Complaint. This Plaintiff shall be referred to as the "Union Pilot."

III. CLASS ACTION ALLEGATIONS

6. The Non-Union Pilots bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other non-union pilots and flight engineers who are employed by Delta and are thus in the collective bargaining unit, which is represented by ALPA.

7. The Union Pilot brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other union pilots and flight engineers who are employed by Delta and thus in the collective bargaining unit, which is exclusively represented by ALPA.

8. The Plaintiffs are suitable representatives of the two different classes: (1) the Delta non-union pilots and flight engineers.

9. The persons comprising those who are in the first class (Delta non-union pilots and flight engineers) are believed to be in excess of 1,000 individuals, who work

through numerous "bases" established by Delta throughout the country. The size of the class is so numerous that joinder of all members of the class is impractical.

10. The persons comprising those who are in the second class (Delta union pilots and flight engineers) are believed to be in excess of 6,000 individuals, who work through numerous "bases" established by Delta throughout the country. The size of the class is so numerous that joinder of all members of the class is impractical.

11. As to each class, the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair adjudication of this controversy.

12. The claims of the named Plaintiffs as representative parties are typical of the claims of the members of the classes.

13. The representatives of the classes will fairly and adequately protect the interests of those classes.

IV. FACTUAL BACKGROUND

14. ALPA is a union which represents pilots and flight engineers who are employed by numerous airlines (including Delta), which operate in the United States (as well as provide foreign travel).

15. ALPA does not negotiate and maintain a "national" contract with multiple airlines. Rather, ALPA periodically negotiates an individual labor contract on behalf of the pilots and flight engineers who work for a single airline. The individual contract with an airline is actually negotiated through a Master Executive Council ("MEC"), which consists of the single airline involved.

16. The pay and work conditions vary substantially from airline to airline. The principal factor governing the contract with a particular airline is that airline's profitability.

17. Delta has been experiencing considerable growth and profitability for a number of years. Delta's pre-tax net income for the four year period ending June 30, 1990 was in excess of \$2 billion. In the last half of 1991 Delta acquired certain assets of Pan American Airlines, including its New York shuttle, some foreign routes, aircraft, and employees. Delta expects that this addition will position it well for significant profitability in the coming years.

18. Based on its prior profitability, Delta's union contract for flight employees contains the highest compensation schedule of any ALPA airline.

19. ALPA funds its activities by charging periodic dues, initiation fees, assessments, fines, penalties, and other charges to its members.

20. ALPA expends the income from its members to conduct a variety of activities. Some of the activities and expenditures are germane to the collective bargaining and employee grievance functions carried out by the union in the various collective bargaining units (i.e., each ALPA airline). Other activities and expenditures by ALPA are not germane to the collective bargaining representation function.

21. Pilots and flight engineers employed by Delta have not been required by law to become members of ALPA, as a condition of obtaining or maintaining employment with Delta. Legally, union membership by Delta flight personnel has been voluntary.

22. Those pilots and flight engineers employed by Delta who chose not to become union members, or not to remain in the union, paid no dues or other charges to ALPA.

23. ALPA, as the exclusive bargaining representative of the Delta pilots and flight engineers, is required under Federal Labor Law to negotiate a collective bargaining agreement and handle employee grievances for the benefit

of all employees (that is, both union members and non-union members).

24. ALPA is also required under Federal Labor Law to meet a duty of fair representation as to all Delta pilots and flight engineers (including non-union members covered by the collective bargaining agreement).

25. Section 2 Eleventh (a) of RLA (45 U.S.C. Section 152 Eleventh (a)), as interpreted by multiple decisions of the United States Supreme Court, permits a carrier (such as Delta) and a labor organization duly designated and authorized to represent employees (such as ALPA) to enter into a "Union Security Agreement," which requires, as a condition of continued employment, that each employee in the collective bargaining unit provide financial support to the union.

26. The amount of financial support of the union required of non-union members under the Union Security Agreement (as provided under RLA, and as interpreted by the United States Supreme Court) is that portion of the usual union dues, fees, and assessments (but not fines and penalties) which are germane to the collective bargaining activities of dealing with the employer on labor management issues.

27. On or about October 1, 1990, Delta entered into a collective bargaining agreement which, in its first paragraph, identifies the parties as follows:

"THIS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between DELTA AIR LINES, INC. (hereinafter known as the 'Company'), and the AIR LINE PILOTS in the service of DELTA AIR LINES, INC., as represented by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (hereinafter known as the 'Association')." (Emphasis in original)

The October 1, 1990 Agreement continues in force through August 31, 1993, with subsequent renewals provided under RLA. On November 1, 1991, Delta entered into a Supplemental Agreement (to the Agreement of October 1, 1990). A copy of this Supplemental Agreement is attached as Exhibit 1 to this Complaint.

28. Of relevance here, the Supplemental Agreement adds a new Section 27 titled "Membership and Contract Maintenance," which purports to be a Union Security Agreement (also known as an Agency Shop), under Section 2 Eleventh of RLA, which will become effective on January 1, 1992 (the "Union Security Agreement"). The Union Security Agreement identifies as the parties Delta and the "Air Line Pilots in the service of Delta Air Lines, Inc., as represented by [ALPA]."

29. Plaintiffs, as set forth in this Complaint, seek to have this Court, under RLA, LMRDA, and the Declaratory Judgment Act (28 U.S.C. Section 2201, *et seq.*) declare the invalidity of this Agreement, enjoin its effectiveness, prevent the operation of an Agreement in violation of law, and establish lawful procedures for the future.

V. FIRST CAUSE OF ACTION (LACK OF AUTHORITY TO ENTER INTO AGREEMENT)

30. The allegations set forth in Paragraphs 1-29 are incorporated here.

31. In 1966, the Board of Directors of ALPA adopted a policy which called for the development of operating procedures manuals. Since 1966, ALPA has developed and expanded an Administrative Manual, which covers numerous aspects of operation of ALPA and the MECs. Section 40 of the Administrative Manual, titled "Representation" provides in Part 3.B—Agency Shop, the following provision which is in effect since the 1972 Board action on this subject:

"Where the number of non-union members on an airline represented by ALPA exceeds two percent of the pilots reflected on the Company's system Seniority List and after such time as a simple majority of the ballots returned by the membership of that airline has approved the provisions of an Agency Shop, ALPA shall negotiate an Agency Shop provision with such airline."

32. Section 90 describes in detail "ALPA Voting Procedures," including specific requirements that the voting shall be conducted by "SECRET BALLOT" and that various procedural safeguards shall be effectuated by the Election and Ballot Certification Board ("EBCB") to insure a fair ballot. Prior to entering into the Union Security Agreement on November 1, 1991, ALPA did not conduct a balloting of its membership, to obtain membership approval of the provisions of the Union Security Agreement (i.e., the "Agency Shop"). Instead of a secret ballot of the members, in accordance with ALPA procedure, ALPA entered into the Union Security Agreement with Delta, based solely on a 1988 non-secret Contract Questionnaire distributed to the then members of ALPA.

33. The action of ALPA in failing to ballot, as required by the Union, prior to entering into the Union Security Agreement constitutes a violation of the Bill of Rights of Members of Labor Organizations set forth in Section 101 of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRA," 29 U.S.C. Section 411). Plaintiffs who are Union pilots are entitled to the protection of the Union procedures and the Labor Bill of Rights.

34. The action of ALPA in failing to ballot, as required by the Union, prior to entering into the Union Security Agreement constitutes a violation of ALPA's duty of fair representation owed to the Plaintiffs who are Union Pilots and are Non-Union Pilots.

35. The Plaintiffs (Union and Non-Union) are entitled to a declaratory judgment and preliminary and permanent injunction, enjoining the effectiveness of the November, 1991, ALPA/Delta Union Security Agreement, because it was entered into without authority by ALPA.

36. The Plaintiffs (Union and Non-Union) are entitled to a further preliminary and permanent injunction, restraining ALPA from entering into any future Union Security Agreement with Delta without a prior ballot of ALPA members in good standing employed by Delta, which results in a majority of approval of the provisions of the Union Security Agreement.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative and preliminary and permanent injunctive relief requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

VI. SECOND CAUSE OF ACTION (DENIAL OF NON-UNION, PRE-AGREEMENT VOTING RIGHTS)

37. The allegations set forth in Paragraphs 1-36 are incorporated here.

38. The procedures of ALPA (stated in Paragraph 31 above) provide that only ALPA members, employed by a particular airline, are permitted to vote on the ballot of whether ALPA will enter into a Union Security Agreement with that particular airline.

39. Prior to ALPA entering into the ALPA/Delta Union Security Agreement on November 1, 1991, ALPA did not permit non-union pilots employed by Delta to participate in a ballot on the question of the Union Security Agreement, although Delta's non-union pilots are the persons who are most affected by a Union Security Agreement.

40. The denial to the Non-Union Pilots of an opportunity to vote on the Delta Union Security Agreement is a violation by ALPA of the duty of fair representation owed to the Non-Union Plaintiffs.

41. The Non-Union Plaintiffs are entitled to a declaratory judgment and preliminary and permanent injunction, enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because it was entered into without an opportunity of the Non-Union Plaintiffs to ballot on the Union Security Agreement issue.

42. The Non-Union Plaintiffs are entitled to a further preliminary and permanent injunction, restraining ALPA from entering into any future Union Security Agreement with Delta without a prior ballot of Non-Union Pilots employed by Delta.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

VII. THIRD CAUSE OF ACTION (DENIAL OF FUTURE VOTING RIGHTS)

43. The allegations set forth in Paragraphs 1-42 are incorporated here.

44. Section 27.A.9 of the ALPA/Delta Union Security Agreement (Exhibit 1) provides:

"It is understood and agreed that 90 days prior to the amendable date of this Agreement the Association shall cause a vote to be taken of all members in good standing at that time to determine if they desire that this membership provision continue in full force and effect for the balance of this Agreement and thereafter."

45. The Non-Union Plaintiffs are the individuals most affected by the Union Security Agreement. Yet they are denied the opportunity to vote on any future amendments relating to the Union Security Agreement, including the extension date of its operation. The exclusion of Non-Union Plaintiffs from this vote constitutes a denial of ALPA's duty of fair representation owed to Non-Union Plaintiffs.

46. The Non-Union Plaintiffs are entitled to a declaratory judgment, and preliminary and permanent injunction, enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because it does not permit Non-Union employees of Delta from voting on any amendment to the Union Security Agreement.

47. The Non-Union Plaintiffs are entitled to a further preliminary and permanent injunction, restraining ALPA from entering into any future Union Security Agreement with Delta, which prevents Non-Union Plaintiffs from voting on any amendment to the Union Security Agreement.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

VIII. FOURTH CAUSE OF ACTION (IMPERMISSIBLE COLLECTION OF MONIES FOR NON-GERMANE EXPENSES)

48. The allegations set forth in Paragraphs 1-47 are incorporated here.

49. Section 27.A.1 of the ALPA/Delta Union Security Agreement (Exhibit 1) provides that after January 1, 1992, Non-Union Pilots are required as a condition of continued employment with Delta:

"... to pay to the Association [ALPA] each month a service charge as a contribution for the administration of this Agreement and the representation of such employee. The service charge shall be an amount equal to the Association's regular and usual dues and including MEC assessments. In calculation of each non-member's monthly obligation, the Association shall allocate and adjust charges in the same manner as if followed with respect to its members."

50. The ALPA/Delta Union Security Agreement does not provide that Non-Union Pilots shall pay a collective bargaining service charge, under any circumstances, in an amount less than ALPA's "regular and usual dues and including MEC assessments."

51. ALPA's expenditures in the past, and in the future, will be partially germane to collective bargaining expenses and partially non-germane to such expenditures.

52. The United States Supreme Court, in interpreting union security agreements under RLA, has stated that:

"Before a union may compel dissenting employees to defray the cost of union expenses, it must meet its burden of showing that those expenses were 'necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [collective bargaining] representative.' "

Ellis v. Broth. of Ry., Airline and S.S. Clerks, 104 S.Ct. 1883, 1898 (1984) (concurring opinion).

53. The ALPA/Delta Union Security Agreement, as written, is in violation of RLA, as interpreted by the United States Supreme Court. Both ALPA and Delta were fully aware when they entered into the Union Security Agreement of the Supreme Court decisions relating to Union Security Agreements under RLA, and that some of the ALPA expenditures are and will continue to be non-germane to collective bargaining costs.

54. Since entering into the Union Security Agreement, the Delta MEC of ALPA has distributed multiple flyers to Delta Pilots concerning the Union Security Agreement. Flyers 1, 2, and 3 are attached collectively as Exhibit 2 to this Complaint. These Flyers confirm that ALPA interprets the Union Security Agreement to require all Non-Union Pilots to pay the full union dues (2.35% of gross airline income) as a condition of further employment, as opposed to paying a lesser amount germane to collective bargaining costs.

55. Since entering into the Union Security Agreement, Delta has undertaken no steps to prevent the collection of monies for non-germane expenses from Non-Union Delta Pilots. In preparation for the January 1, 1992 effective date of the Union Security Agreement, ALPA has developed a series of form letters and flow diagrams related to enforcement of collection of full dues (2.35% of gross income) from non-union pilots and terminating the employment of all non-payees. Exhibit 3 consists of:

—An ALPA Delta MEC letter dated October 28, 1991 (which was sent with the Union Security Agreement to members), demanding payment of 2.35% of income to the union; and

—A flow diagram, showing termination of employment of non-payees.

56. The Non-Union Plaintiffs are entitled to a declaratory judgment, and preliminary and permanent injunction, enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because the Agreement requires Non-Union Pilots to pay the full union dues and charges (2.35% of gross income), whether or not those monies are used for activities which are germane to collective bargaining.

57. The Non-Union Plaintiffs are entitled to a further preliminary and permanent injunction, restraining ALPA and Delta from entering into any future Union Security

Agreement, which does not limit monies collected from Non-Union Plaintiffs to those necessary to cover expenses germane to collective bargaining.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief against ALPA and Delta, as requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

IX. FIFTH CAUSE OF ACTION (ILLEGAL COLLECTION OF RETROACTIVE UNION FEES)

58. The allegations set forth in Paragraphs 1-57 are incorporated here.

59. The purpose of the Union Security Agreement under RLA is to prevent non-union employees of the collective bargaining unit from continuing as "free-riders" and require them to thereafter pay their fair share of union expenses germane to collective bargaining. Section 2 Eleventh of RLA provides that Union Security Agreement cannot be effective until the later of 60 days following employment or 60 days following the date of the Agreement. As the statute is written, a Union Security Agreement cannot be used to collect from any employee prior obligations to the Union (as a condition of continued employment).

60. Section 27.A.3. of the ALPA/Delta Union Security Agreement (Exhibit 1) provides that if, at the time of the implementation of the Agreement, a pilot is delinquent in the payment of fees, dues, or assessments, then if the delinquency continues, he/she shall be discharged by Delta.

61. ALPA and Delta are improperly utilizing the Union Security Agreement to collect for the benefit of ALPA union arrearages through the Union Security

Agreement, penalizing any non-payers with termination of employment.

62. All Plaintiffs, who are not current as to union payments as of January 1, 1992, and may be deemed by ALPA to be a member (whether or not the pilot deems him or herself to be a member) are entitled to a declaratory judgment, and preliminary and permanent injunction, enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because the Agreement seeks to unlawfully collect union charges prior to the Agreement's effective date on penalty of termination of employment, all in violation of the RLA.

63. All Plaintiffs, who are not current as to union payments as of January 1, 1992, and may be deemed by ALPA to be a member (whether or not the pilot deems him or herself to be a member) are entitled to a further preliminary and permanent injunction, restraining ALPA and Delta from entering into any future Union Security Agreement which seeks to unlawfully collect union charges prior to the Agreement's effective date on penalty of termination of employment.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief against ALPA and Delta, as requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

X. SIXTH CAUSE OF ACTION (ILLEGAL GRIEVANCE PROCEDURE)

64. The allegations set forth in Paragraphs 1-63 are incorporated here.

65. Section 27.A.5. of the ALPA/Delta Union Security Agreement (Exhibit 1) establishes a grievance procedure under the Union Security Agreement to pilots who intentionally become delinquent on their service charge

payments and as a result of non-payment "is to be so terminated" from employment. Such a grievance procedure, which is conditioned on placing oneself in jeopardy of termination, prior to being eligible for relief, is unlawful under the duty of fair representation and the Due Process Clause of the United States Constitution.

66. Since the Union Security Agreement does not recognize the possibility of a Non-Union Pilot paying less than full dues as a collective bargaining service charge, the Agreement's grievance procedure (Section 27.A.5) offers no remedy to challenge the collection of monies for non-germaine expenditures, or to determine what constitutes non-germaine expenditures, all in violation of the duty of fair representation and the Due Process Clause.

67. ALPA contends that it has in effect certain policies and procedures concerning "agency fees" (that is, fees collected under a Union Security Agreement). These procedures are not part of ALPA's Administrative Manual.

68. ALPA's claimed agency fee procedure is a nullity, as a result of the express language of the Union Security Agreement, which does not recognize that Non-Union Pilots "service charge" can ever be less than the full Union dues and other charges (i.e., 2.35% of gross income).

69. ALPA does not provide any opportunity for Non-Union employees of airlines with Union Security Agreements to have any vote, control, or input as to ALPA's agency fee procedure. Thus, ALPA is free to modify, amend or discontinue its agency fee procedure at any time without remedy under the Union Security Agreement.

70. ALPA's agency fee procedure is not in compliance with the procedures required by the decisions of the United States Courts, interpreting Union Security Agreements under RLA and other Federal Labor Laws.

71. The Non-Union Plaintiffs are entitled to a declaratory judgment, and preliminary and permanent injunction,

enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because:

—the Agreement fails to include adequate grievance procedures which can be invoked without incurring job jeopardy, and which permit a reasonable procedure to challenge collection of monies for non-germaine expenses and the determination of what is a germaine expense; and

—the ALPA agency fee procedure conflicts with the Agreement, is established without participation by Non-Union Pilots, and fails to comply with procedural standards established by Federal Court decisions.

72. The Non-Union Plaintiffs are entitled to a further preliminary and permanent injunction, restraining ALPA, and Delta from entering into any future Union Security Agreement, which does not provide for proper grievance procedures.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief against ALPA and Delta, as requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

XI. SEVENTH CAUSE OF ACTION (NON-GERMAINE EXPENDITURES)

73. The allegations set forth in Paragraphs 1-72 are incorporated here.

74. The United States Supreme Court has limited the use of Non-Union Union Security Agreement payments to expenditures which are germaine to collective bargaining activities.

75. ALPA has in the past, and will in the future, collect from non-union pilots, including those at Delta,

monies for certain activities not germaine to collective bargaining.

76. Under the ALPA/Delta Union Security Agreement, ALPA intends to collect 2.35% of each Non-Union Pilots' gross airline income. The 2.35% is broken down into three major groups:

1.50% —to National ALPA;

.50% —to the Major Contingency Fund (referred to by ALPA as its War Chest)

.35% —to SMRA (Special MEC Reserve Account)

2.35% —Total

77. Article IX Section 14 of the ALPA Constitution and By-Laws authorizes the collection from members of a Major Contingency Fund (War Chest) of \$100,000,000, which is to be spent by ALPA's Board of Directors, as follows:

"The Major Contingency Fund shall not be utilized under any conditions as a source of funding for past or current budgeted operational expenses. Such Fund may be utilized only for the following purposes:

(1) To treat with issues of urgent concern that significantly and adversely affect the airline piloting profession and *which cannot be funded by normal Association budgeting practices and policies.*"

(Emphasis added)

78. Collective bargaining costs are normally budgeted operational expenses of ALPA. Therefore, under the ALPA Constitution and By-Laws, the Major Contingency Fund cannot be used for collective bargaining costs. Hence, the War Chest is not to be expended on matters germaine to collective bargaining.

79. ALPA also collects from all members (and seeks to collect here from non-members under the Union Secu-

rity Agreement) a Special Reserve Account. The Special Reserve Account is used by the MEC, when that MEC has a deficit balance in its spending limit, otherwise, the monies are transferred to the Major Contingency Fund (whenever the Fund is below \$25,000,000). Funds can also be transferred to the general reserves of ALPA. Monies not spent by the MEC or transferred to the War Chest are refunded to the payor.

80. Even if the Delta MEC does not have a deficit balance, there is no assurance that Delta pilots will receive a refund of their Special Reserve Account payments, since ALPA can transfer the Special Reserve Account money to the War Chest (and under certain conditions, to the general reserves of ALPA). The typical experience under ALPA is that Special Reserve Account refunds are minimal or none.

81. ALPA's expenditure of monies in the Special Reserve Account and the Major Contingency Fund (War Chest) is typically for expenditures not germane to collective bargaining.

82. Since monies collected for the War Chest and Special Reserve Account are obtained in advance of the determination of the purpose for which they will be used, such monies cannot be collected from Non-Union Pilots, because Non-Union Pilots' obligation is limited to payment of monies which are expected to be used only for germane purposes.

83. The portion of the monies which are paid directly to national ALPA are not all used for germane purposes, but most of such monies are categorized as such for the purposes of ALPA accounting.

84. The Non-Union Plaintiffs are entitled to declaratory judgment, and preliminary and permanent injunction, enjoining the effectiveness of the November 1, 1991 ALPA/Delta Union Security Agreement, because the Agreement requires Non-Union Pilots to pay monies to

the Major Contingency Fund, Special MEC Reserve Account and National ALPA for expenditures which are not germane to collective bargaining.

85. The Non-Union Plaintiffs are entitled to an accounting of the use of all Union funds and an advanced reduction of service charges, which limits Non-Union Pilots' charges to those portions of Union expenditures which are germane to collective bargaining.

86. In order to comply with the rights of Non-Union Pilots, they are entitled to receive periodic statements from the Union, disclosing the amounts they may pay for the next billing period, in two alternative amounts:

—the monies due if the pilot wishes to voluntarily pay the same dues owed by members; and

—the monies due if the pilot wishes to limit the payment to monies for expenses germane to collective bargaining.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order, certifying a class action, and grant the declarative, and preliminary and permanent injunctive relief, and accounting relief against ALPA, as requested in this Cause of Action, and award the Plaintiffs their reasonable attorneys' fees and costs and expenses of litigation.

Dated: December 10, 1991

Respectfully submitted,

/s/ Philip F. Hudock
 PHILIP F. HUDOCK, ESQ.
 Attorney for Plaintiffs
 Bar No. 6130
 Suite 600
 8150 Leesburg Pike
 Vienna, Virginia 22182
 (703) 833-8242

[EXHIBIT 1]

SUPPLEMENTAL
AGREEMENT

between

DELTA AIR LINES, INC.

and

THE AIR LINE PILOTS

in the Service of

DELTA AIR LINES, INC.

as Represented by

THE AIR LINE PILOTS ASSOCIATION
INTERNATIONAL

THIS SUPPLEMENTAL AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between DELTA AIR LINES, INC. (hereinafter known as the "Company"), and the AIR LINE PILOTS in the service of DELTA AIR LINES, INC., as represented by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (hereinafter known as the "Association").

WHEREAS, the Company and the Association desire to amend the Pilot Working Agreement signed October 1, 1990,

NOW, THEREFORE, it is agreed that:

* * * *

SECTION 27

MEMBERSHIP AND CONTRACT MAINTENANCE

A. Conditions

1. Each pilot of the Company covered by this Agreement who fails to voluntarily acquire and main-

tain membership in the Association shall be required, as a condition of continued employment, beginning sixty (60) days after the effective date of this Agreement or the completion of its probationary period, whichever is later, to pay to the Association each month a service charge as a contribution for the administration of this Agreement and the representation of such employee. The service charge shall be an amount equal to the Association's regular and usual dues and including MEC assessments. In calculation of each non-member's monthly obligation, the Association shall allocate and adjust charges in the same manner as if followed with respect to its members.

2. The provisions of this Section shall not apply to any employee covered by this Agreement to whom membership in the Association is not available upon the same terms and conditions as are generally applicable to any other pilot, or to any pilot to whom membership in the Association was denied or terminated for any reason other than the failure of the pilot to pay initiation (or reinstatement) fee, dues, and assessments uniformly required.
3. If a pilot covered by this Agreement is, at the time of implementation of this agreement delinquent, or becomes delinquent in the payment of fees, dues and assessments or the service charge as stated in Paragraph 1, above, the Association shall notify him by certified mail, return receipt requested, copy to the Vice President Flight-Operations of the Company, or designee, that he is delinquent and is subject to discharge as a pilot of the Company. Such letter shall also notify the pilot that he must remit the required payment within a period of fifteen (15) days or be discharged.

4. If, upon the expiration of the fifteen (15) day period, the pilot still remains delinquent, the Association shall thereafter certify in writing to the Vice-President-Flight Operations of the Company, or designee, copy to the pilot, that the pilot has failed to remit payment within the grace period allowed and is therefore to be discharged. The Vice President-Flight Operations or designee shall, within five (5) days, terminate the service of such employee as a pilot.
5. A grievance by a pilot who is to be so terminated as the result of an interpretation or application of the provisions of this Section shall be subject to the following procedure, which shall be exclusive of the provisions of Section 18 and 19 of this Agreement.
 - a. A pilot who believes that the provisions of Section 27 have not been properly interpreted or applied, as they pertain to him, may submit his request for review in writing within five (5) days from the date of receipt of notice by him. Such request must be submitted to the Vice President-Flight Operations of the Company or his successor or designee who shall review the protest and render a decision in writing with respect thereto not later than five (5) days following the receipt of the request of review.
 - b. The Vice President-Flight Operations of the Company or his successor or designee, shall forward his decision to the pilot with a copy to the official of the Association who shall promptly be designated in writing by the Association for this purpose. Said decision shall be final and binding on all interested parties unless appealed as hereinafter provided. If the decision is not satisfactory to either the

- pilot or the Treasurer of the Association, either may appeal the decision by filing a notice of appeal. Such notice shall be sent to the Company, to the other party and to the National Mediation Board within ten (10) days of the receipt of the decision and must contain a request for the National Mediation Board to provide a list of five (5) neutral referees. A neutral referee may be agreed upon by the pilot and the Association within ten (10) days after receipt of the list of neutral referees. If the parties cannot agree on a neutral referee, a referee, will be chosen from the panel supplied by the National Mediation Board. The alternate strike method shall be used to select a neutral referee with the pilot initiating the first rejection. Such final selection of a neutral referee shall be accomplished within ten (10) days after receipt of the list of neutral referees. If the parties have not reached agreement by the alternate strike method within the aforementioned ten (10) day period, the first name listed on the five (5) name panel provided by the National Mediation Board shall be designated the neutral referee.
- c. The decision of the neutral referee shall be requested within thirty (30) days after the hearing of the appeal unless otherwise agreed by the pilot and the Association and shall be final and binding on all parties to the dispute. The fees, charges and other reasonable expenses of such neutral referee shall be paid equally by the pilot and the Association.
 6. During the period a grievance is being handled under the provisions of this Section and until

final award by the Vice President-Flight Operations, his designee, or the neutral referee, the pilot shall not be discharged from the Company nor lose any seniority rights because of non-compliance with the terms and provisions of this Section.

7. *A pilot discharged by the Company under the provision of this Paragraph shall be deemed to have been "discharged for cause" within the meaning of the terms and provisions of this Agreement.*
8. *It is agreed that the Company shall not be liable for any time, wage or all other claims (including discharge) of any pilot which may result from action taken by the Company pursuant to a written order by an authorized Association representative under the terms of this Paragraph or Agreement.*
9. *It is understood and agreed that 90 days prior to the amendable date of this Agreement the Association shall cause a vote to be taken of all members in good standing at that time to determine if they desire that this membership provision continue in full force and effect for the balance of this Agreement and thereafter.*

* * * *

SECTION 28

DURATION AND EFFECT ON OTHER AGREEMENTS

Section 28.A.2 is amended to read:

The Agreement signed October 1, 1990, all Supplemental Agreements attached thereto, and all Supplemental and Transition Agreements signed _____, except as amended by this Supplemental Agreement signed

_____, shall continue in full force and effect through December 31, 1994 and shall renew itself without change through each succeeding December 31 thereafter unless written notice of intended change is served in accordance with Section 6, Title I of the Railway Labor Act, as amended, by either party hereto, at least sixty (60) days prior to December 31 in any year.

IN WITNESS WHEREOF, the parties hereto have signed this Supplemental Agreement this 1st day of November, 1991.

FOR DELTA AIR LINES, INC.

FOR THE AIR LINE PILOTS IN THE
SERVICE OF DELTA AIR LINES, INC.

/s/ R. W. Allen
R. W. ALLEN, Chairman
and Chief Executive Officer

/s/ J. R. Babbitt
J. R. BABBITT, President
Air Line Pilots Association

/s/ W. W. Hawkins
W. W. HAWKINS, President
and Chief Operating Officer

WITNESS:

WITNESS:

/s/ M. W. Worth
M. W. WORTH

/s/ R. D. Shelton
R. D. SHELTON

/s/ R. A. McClelland
R. A. MCCLELLAND

/s/ R. O. Norris
R. O. NORRIS

/s/ H. C. Alger
H. C. ALGER

/s/ G. S. Holm
G. S. HOLM

/s/ H. D. Greenberg
H. D. GREENBERG

/s/ R. H. Drew
R. H. DREW

/s/ A. L. Beck
A. L. BECK

/s/ W. C. Spalding
W. C. SPALDING

[Filed Jan. 23, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

**ANSWER OF DEFENDANT
AIR LINE PILOTS ASSOCIATION**

Defendant Air Line Pilots Association (ALPA) answers the Complaint as follows:

Response to Introductory Paragraph

ALPA admits the first two sentences of the introductory paragraph of the Complaint. Responding to the third sentence, ALPA admits that plaintiffs filed this case as a class action but denies that class action status is proper.

Response to Numbered Paragraphs

Responding to the numbered paragraphs of the complaint, ALPA admits, denies, or otherwise avers as follows:

1. This paragraph states legal conclusions to which no response is required.
2. Admits the first sentence. The second sentence states legal conclusions to which no response is required.
3. Admits.
4. Admits.
5. Admits.
6. Denies that the Non-Union Pilots are entitled to bring this action under Rule 23 on behalf of the other

non-union pilots and flight engineers who are employed at Delta.

7. Denies that the Union Pilot is entitled to bring this action under Rule 23 on behalf of the other union pilots and flight engineers who are employed at Delta.

8. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

9. Admits that there are in excess of 1,000 Delta non-union pilots and flight engineers but denies that these individuals constitute a class within the meaning of Rule 23.

10. Admits that there are in excess of 6,000 Delta union pilots and flight engineers but denies that these individuals constitute a class within the meaning of Rule 23.

11. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

12. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

13. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

14. Admits.

15. Admits.

16. Admits that there are variations in pay and working conditions from airline to airline but denies that in all cases these differences are substantial. Denies the second sentence.

17. ALPA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph except that ALPA admits the third sentence.

18. Admits that Delta's union contract for flight employees contains the highest compensation schedule of any ALPA airline but denies that this is based solely on its prior profitability.

19. Admits.

20. Admits the first sentence. In response to the next two sentences, ALPA states that the vast majority of its activities and expenditures are germane to collective bargaining, but admits that a small fraction of its activities and expenditures are not germane to collective bargaining.

21. Admits.

22. Denies. Some pilots and flight engineers employed by Delta who are not union members nonetheless have chosen to pay the equivalent of dues to ALPA.

23. This paragraph states legal conclusions to which no response is required.

24. This paragraph states legal conclusions to which no response is required.

25. This paragraph states legal conclusions to which no response is required.

26. This paragraph states legal conclusions to which no response is required.

27. Admits.

28. Admits.

29. Admits that plaintiffs are requesting the relief specified but denies that plaintiffs are entitled to such relief.

30. ALPA incorporates by reference its answers to paragraphs 1-29.

31. Admits, except that the first word of the quoted provision is "When" not "Where."

32. Denies the first sentence, because it purports to characterize a written provision that speaks for itself.

Denies the second and third sentences, except that ALPA admits that prior to entering into the Union Security Agreement on November 1, 1991, ALPA did not conduct a secret ballot vote but did poll its members by means of a written Questionnaire to which members did not have to sign their name.

33. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied. ALPA admits that all union members are entitled to the protection of ALPA's procedures and all rights under law.

34. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

35. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

36. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

37. ALPA incorporates by reference its answers to paragraphs 1-36.

38. Denies the characterization of ALPA's procedures. Section 40 of ALPA's Administrative Manual (referred to in Paragraph 31 of the Complaint) speaks for itself.

39. Admits that prior to entering into the ALPA/Delta Union Security Agreement on November 1, 1991, ALPA did not ballot the non-union pilots on the question of the Union Security Agreement, but denies that the non-union pilots are the persons most affected by a Union Security Agreement.

40. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

41. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

42. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

43. ALPA incorporates by reference its answers to paragraphs 1-42.

44. Admits.

45. Denies the first sentence. Admits the second sentence. The third sentence states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

46. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

47. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

48. ALPA incorporates by reference its answers to paragraphs 1-47.

49. Admits.

50. Denies. The language of the ALPA/Delta Union Security Agreement must be construed in light of applicable law and ALPA policies.

51. Admits that a small fraction of ALPA's past expenditures were used for purposes not germane to collective bargaining but denies the remainder of the paragraph. Plaintiffs' averment regarding future expenditures is speculative.

52. Denied. The quotation is not from the opinion of the Supreme Court but from Justice Powell's separate opinion concurring in part and dissenting in part, and is taken out of context.

53. The first sentence states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied. ALPA admits the second sentence as to ALPA's awareness but lacks sufficient knowledge or information to form an opinion about Delta's awareness.

54. Admits the first two sentences. Denies the third sentence.

55. Admits the first sentence. Admits that in preparation for the January 1, 1991 effective date of the Union Security Agreement, ALPA developed a series of form letters and diagrams regarding the agency shop provision, some of which are included as Exhibit 3. Denies plaintiffs' characterizations of these documents and denies the remainder of the paragraph.

56. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

57. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

58. ALPA incorporates by reference its answers to paragraphs 1-57.

59. This paragraph states legal conclusions to which no response is required.

60. Denies, because Section 27.A.3 speaks for itself.

61. Denies.

62. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

63. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

64. ALPA incorporates by reference its answers to paragraphs 1-63.

65. Denies the first sentence because Section 27.A.5 speaks for itself. The second sentence states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

66. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

67. Admits the first sentence. Denies the second sentence.

68. Denies.

69. Denies.

70. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

71. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

72. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

73. ALPA incorporates by reference its answers to paragraphs 1-72.

74. This paragraph states a legal conclusion to which no response is required.

75. Admits.

76. Denies first sentence. Non-members who object to paying for expenses not germane to collective bargaining are permitted to pay less than 2.35%. Admits the second sentence insofar as it applies to pilots who pay the full 2.35%.

77. Denies plaintiffs' characterizations of Article IX Section 14 of the ALPA Constitution because it speaks for itself.

78. Denies.

79. Denies plaintiffs' characterization of Section 16 of the ALPA Constitution because it speaks for itself. Admits that part of the dues or fees collected by ALPA are allocated to a Special Reserve Account.

80. Denies the first sentence, except ALPA admits that there is no assurance that Delta pilots will receive a refund of their Special Reserve Account payments. Denies the second sentence.

81. Denies.

82. Denies.

83. Denies, except that ALPA admits that not all of the monies paid directly to national ALPA are used for purposes germane to collective bargaining.

84. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

85. This paragraph states a legal conclusion to which no response is required.

86. This paragraph states a legal conclusion to which no response is required but if deemed to be an allegation of fact it is denied.

First Affirmative Defense

87. The complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

88. Plaintiffs have failed to exhaust the remedies available under ALPA's Policies and Procedures Applicable to Agency Fees.

Third Affirmative Defense

89. Plaintiffs lack standing to bring the claims in the Fifth Cause of Action (Illegal Collection of Retroactive Union Fees).

Fourth Affirmative Defense

90. The Union Plaintiff, Bruce R. Booher, lacks standing to bring the claims in the Second Cause of Action (Denial of Non-Union, Pre-Agreement Voting Rights); the Third Cause of Action (Denial of Future Voting Rights); the Fourth Cause of Action (Impermissible Collection of Monies for Non-Germane Expenses); and the Seventh Cause of Action (Non-Germane Expenditures).

WHEREFORE, having fully answered, ALPA prays that judgment be entered against plaintiffs and in favor of ALPA, and that ALPA be awarded its costs, including reasonable attorneys' fees.

/s/ Jerry D. Anker

JERRY D. ANKER

D.C. Bar No. 49726

SUZANNE L. KALFUS

D.C. Bar No. 430178

Air Line Pilots Association

Suite 702

1625 Massachusetts Avenue, N.W.

Washington, D.C. 20036

(202) 797-4087

Counsel for Defendant

Air Line Pilots Association

[Certificate of Service Omitted]

[Filed Aug. 2, 1993]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

ORDER

This matter comes before the Court on the motion of the plaintiffs to file an amendment to the complaint. Upon consideration of the motion, together with the supporting brief, the opposition of ALPA thereto, the Court finds that, in accordance with the provision in Rule 15(a) that leave to amend pleadings should be freely given when justice so requires, the motion should be allowed. The Court further finds that, since the matters in the amendment and the defendants' opposition thereto are part of the record on plaintiffs' motion for summary judgment, it appears unnecessary to require a responsive pleading from the defendants; however, because of the passage of time, the Court will permit a response from defendants, if desired.

It is, therefore, this 30th day of July, 1993,

ORDERED that the motion of the plaintiff for leave to file an amendment to the complaint be, and hereby is, GRANTED. The amendment shall be Exhibit 1 of the plaintiffs motion, which is deemed filed and served on the date of entry of this Order. The defendants shall be deemed to have generally denied the allegations in the amendment, and no responsive pleading to the amendment shall be required from the defendants.

/s/ Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
United States District Judge

[Filed Aug. 2, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

AMENDMENT TO COMPLAINT

Pursuant to Rule 15 and Local Rule 108(i), Plaintiffs amend their Complaint, as stated in this Amendment, by adding to the original Complaint the following:

* * * *

**XI. SEVENTH CAUSE OF ACTION
(NON-GERMANE EXPENDITURES)**

86A. The Non-Union Plaintiffs are entitled to an "in dependent audit" by ALPA's independent CPA of the germane/non-germane calculation, prior to ALPA's use of such calculation to collect any monies from the Non-Union Plaintiffs.

86B. ALPA has not in the past, and does not intend in the future, to have a lawful "independent audit" of the germane/non-germane calculation it uses to collect monies from Non-Union Plaintiffs.

86C. In determining its germane/non-germane calculation, ALPA has not in the past, and does not intend in the future, to examine annually its expenditures in each project code, by qualified personnel, and with proper procedures, to insure the accuracy of the rebate calculation.

86D. ALPA contends that it is not required to allocate indirect costs between germane and non-germane expenditures in calculating the monies owed by Non-Union Plaintiffs under the Union Security Agreement.

86E. ALPA has not in the past, and does not intend in the future, to allocate, fairly and properly, indirect costs between germane and non-germane expenditures, in calculating the monies owed by the Non-Union Plaintiffs under the Union Security Agreement.

86F. ALPA has in the past, and intends in the future, to consider only expenditures (and not income) in its rebate calculation. Further, ALPA has typically not spent all of its revenue in the year of receipt. For example, ALPA's Major Contingency Fund (MCF) recently had revenues substantially in excess of current expenditures as follows:

Period	Excess Income
Calendar Year 1990	—\$8 million
Calendar Year 1991	—\$12 million
January-June 1992	—\$8 million

86G. ALPA has not in the past, and does not intend in the future, to rebate to Non-Union pilots 100% of unexpended monies (paid into various ALPA accounts).

86H. When unexpended funds are held in an account by ALPA after the end of a calendar year, ALPA does not attribute that money thereafter to the original payors, precluding future rebate of all such monies to the original payors, including the Non-Union Plaintiffs.

86I. Monies collected under Union Security Agreements may not be used, even temporarily, for non-germane purposes. ALPA's practices described in Paragraphs 86F, G and H constitute permanent use of Union Security Agreement monies for non-germane purposes.

86J. Since January 1, 1992 the Non-Union Plaintiffs have paid monies to ALPA pursuant to the Union Security Agreement, on threat of job termination, if payments were not made.

86K. As part of any ruling of this Court invalidating or enjoining (in whole or part) the operation of the Union Security Agreement, Non-Union Plaintiffs are entitled to a mandatory injunction requiring the refund to them of all monies paid to ALPA, with interest, and the enjoining of the payment of future monies, except as authorized under conditions established by this Court.

86L. The Non-Union Plaintiffs are entitled to a declaratory judgment, and preliminary and permanent injunction, requiring that any germane/non-germane calculation, collection or return of funds by ALPA shall be in accordance with the provisions set forth in Paragraphs 86A-K, including the requirement of an independent audit, the accurate determination of the rebate calculation, the proper allocation of indirect costs, the consideration of income in the rebate calculation, the 100% rebate of monies not expended on a current basis, and the avoidance of the use of monies for non-germane purposes, either temporarily or permanently.

WHEREFORE, Plaintiffs respectfully pray this Honorable Court enter an Order as requested in the original Complaint and as further requested in this Amendment to the Complaint.

* * * *

[Filed Jan. 10, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

MOTION TO INTERVENE

Pursuant to F.R.Civ.P. 24, this Motion to Intervene is filed on behalf of 142 pilots ("Applicants"), who seek to intervene as additional Plaintiffs in this agency shop, labor law litigation. In support of this motion, it is alleged as follows:

I. PROCEDURAL BACKGROUND

1. Pursuant to the Railway Labor Act ("RLA", 45 U.S.C. Section 151, *et seq.*), the original Plaintiffs (five union or nonunion pilots employed by Delta Air Lines, Inc.) initiated this agency shop litigation against their union, Air Line Pilots Association International ("ALPA"), and employer, Delta Air Lines, Inc. ("Delta").

2. The original Complaint raised procedural questions related to the agency shop agreement between ALPA and Delta, as well as challenges to the fees which are charged under agency shop by ALPA to nonunion pilots.

3. This Court, by Summary Judgment Order, entered July 30, 1993, resolved procedural questions in Causes of Action I, II, III, and V. Left unresolved were: Cause of Action IV (impermissible collection of monies for non-germane purposes based on the wording of the agency shop agreement), VI (illegal grievance procedures) and VII (charging for nongermane expenditures).

4. The original Complaint designated itself as a class action, and the named Plaintiffs filed a motion, pursuant to Rule 23, requesting certification as a class action. By Order dated July 30, 1993, this Court denied class certification (without specification of grounds).

II. APPLICANTS

5. The persons who now seek intervention (Applicants) are 142 pilots employed by an airline for which ALPA is the collective bargaining representative. The name, address, employer, and union/nonunion status for each Applicant is set forth on Plaintiff's proposed Second Amendment to the Complaint, which is Exhibit 1 attached to this Motion.

6. 140 of the Applicants are pilots employed by Delta. These Applicants, of course, are in an identical position as the original Plaintiffs, related to each of the remaining issues in this litigation.

7. 2 Applicants are employed by USAir, Inc. ("USAir"). USAir is a common carrier by air, engaged in interstate and foreign commerce, and is subject (like Delta) to RLA. ALPA is the collective bargaining agent for USAir pilots (as it is for Delta pilots).

8. ALPA charges nonunion pilots employed by all of the airlines for which it is the collective bargaining agent the same agency shop fee. Therefore, the issues related to nongermane expenditures (the Seventh Cause of Action) are identical as to both Delta and USAir pilots.

9. ALPA uses the same agency shop grievance procedure for pilots employed by all of the airlines for which it is the collective bargaining agent. Therefore, the issues related to grievance procedures (the Sixth Cause of Action) are identical as to both Delta and USAir pilots.

10. The collective bargaining agreements between ALPA and Delta and between ALPA and USAir contain

comparable language, as to the agency shop provision, which is the subject of the Fourth Cause of Action. Both the Delta and USAir agency shop agreements provide for an agency shop fee (called a service charge) in an amount equal to ALPA's regular and usual dues and MEC (Master Executive Council) assessments charged union pilots (with no reference in either agreement that a nonunion pilot is allowed to pay less than a union pilot, i.e. for only germane expenditures). Therefore, the issues related to the language of the agency shop agreement (the Fourth Cause of Action) are identical as to both Delta and USAir pilots.

GROUND TO INTERVENE

11. The ruling of this Court as to the Fourth, Sixth, and Seventh Causes of Action affects an interest that the Applicants have as to the subject of this action. Because a class action has been denied, Applicants interest in this matter may not be entitled to the benefits of the decision of this Court, unless they are able to intervene as party Plaintiffs. Further, because there is no class action, the original Plaintiffs may not be able to protect the interest of the Applicants, unless the Applicants can intervene themselves. Therefore, within the meaning of Rule 24(a)(2), Applicants are entitled to intervention as a right.

12. The Applicants' claims as to the issues in the Fourth, Sixth, and Seventh Causes of Action have common questions of law and fact with the original Plaintiffs. Indeed, the questions of law and fact are identical. Therefore, within the meaning of Rule 24(b), Applicants are entitled to permissive intervention.

13. At present, there is no discovery cutoff, no time limit set for dispositive motions, and no dates for either a pretrial conference or trial in this action. The intervention of the Applicants at this time will not delay the prosecution of this case; the Motion is thus "timely".

14. The Applicants adopt as their claims the allegations set forth in the original Complaint and the First Amendment to the Complaint (which was authorized by Order of this Court, dated July 30, 1993). The only additional allegations in the Applicants' claims are those set forth in Exhibit 1 of this Motion, which is proposed as the Second Amendment to the Complaint, and identifies:

- (a) The name and address of each Applicant;
- (b) The airline with which each Applicant is employed as a pilot;
- (c) The statement of whether the Applicant is a member of ALPA or a nonunion pilot; and
- (d) Allegations that USAir is an air carrier subject to the Railway Labor Act, that USAir pilots are currently represented by ALPA as their collective bargaining representative, and USAir has an agency shop agreement comparable to Delta's (as is pertinent to this Action).

WHEREFORE, pursuant to Rule 24, the Applicants respectfully request that this Court enter an Order:

- (a) authorizing the intervention of the Applicants as additional party plaintiffs;
- (b) directing that the Applicants' claim shall be as set forth in the original Complaint, the First Amendment to the Complaint authorized by Order of July 30, 1993, and the Second Amendment to the Complaint (which accompanies this Motion); and
- (c) finding that the Defendants shall not be required to file a response to the Second Amendment, but they may elect to file an answer thereto within 20 days of the entry of the Order of Intervention of this Court.

Respectfully submitted,

/s/ Philip F. Hudock, Esq.
 PHILIP F. HUDOCK, Esq.
 Bar No. 6130
 Counsel for Plaintiffs
 Suite 600
 8150 Leesburg Pike
 Vienna, Virginia 22182
 (703) 883-8242

Dated: January 7, 1994

[Filed Jan. 21, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to F.R.Civ.P. 65 and Local Rule No. 205, Plaintiffs move this Court for a Preliminary Injunction, enjoining an Arbitration proceeding sought by Defendant, Air Line Pilots Association, International ("ALPA"), that will decide a core issue in this litigation, and will also usurp the jurisdiction of this Court. In support of this motion, it is alleged as follows:

I. PROCEDURAL BACKGROUND

A. The Status of this Litigation

1. Pursuant to the Railway Labor Act ("RLA", 45 U.S.C. Section 151, *et seq.*), Plaintiffs (five union or non-union pilots employed by Delta Air Lines, Inc.) initiated this Agency Shop litigation against their union, ALPA, and employer, Co-Defendant, Delta Air Lines, Inc. ("Delta"). The suit was filed in December 1991, shortly before Agency Shop became effective for Delta pilots (on January 1, 1992).

2. The Complaint raised both procedural and substantive questions related to the Agency Shop agreement between ALPA and Delta, as well as a challenge to the fees which are charged under Agency Shop by ALPA to nonunion pilots.

3. This Court, by Summary Judgment Order, entered July 30, 1993, resolved procedural questions in Causes of Action I, II, III, and V. Left unresolved were: Cause of Action IV (impermissible collection of monies for non-germane purposes based on the wording of the Delta

Agency Shop agreement), VI (illegal grievance procedures related to Agency Shop) and VII (a determination of the proper Agency Shop fees to be charged non-union pilots).

4. The Complaint designated itself as a class action, and the five named Plaintiffs requested certification as a class action. By Order dated July 30, 1993, this Court denied class certification (without specification of grounds).

5. Pending before this Court is a Motion to Intervene, filed on behalf of 142 pilots, who wish to become additional Plaintiffs, and obtain the benefits of this litigation (since class certification was denied).

6. There is no pre-trial conference scheduled or trial date in this litigation. ALPA has a motion pending requesting an immediate discovery cut-off. Plaintiff's oppose the discovery cutoff, but have requested a Status Call.

B. The Current Status of the Delta Agency Shop Dispute

7. Under the Agency Shop Agreement between ALPA and Delta, Delta non-union pilots have been required to pay an Agency Shop fee to ALPA since January 1, 1992 (or face termination of employment with Delta).

8. On June 15, 1993, ALPA completed its calculation of the Agency Shop fee that non-union pilots were to pay during 1992. This calculation is known as ALPA's Statement of Germane and Nongermane Expenses ("SGNE"). Pilots actually paid an Agency Shop fee during 1992 based on the 1990 and 1991 SGNE's.

9. Determination of the correct amount for the 1992 SGNE (i.e. the 1992 Agency Shop fee) is a core issue in this litigation (i.e. Cause of Action VII).

10. ALPA notified non-union pilots at the end of July, 1993 of the calculation of the 1992 SGNE.

11. The non-union Plaintiffs and other non-union pilots gave written notice to ALPA of their objection to the 1992 SGNE, and also noted that by the time ALPA advised of the 1992 SGNE it was too late (under ALPA's Agency Shop rules) to request arbitration for the 1992 SGNE. The named Plaintiffs and the other objecting pilots generally sent to ALPA a form letter, a copy of which is attached as Exhibit 1 (as sent by Robert A. Miller, the lead Plaintiff in this case).

12. Notwithstanding that it was too late for arbitration under ALPA's Agency Shop rules, ALPA proceeded to arrange for Arbitration with the American Arbitration Association ("AAA"), select an Arbitrator (Louis Aronin), and an arbitration site (AAA's Washington office).

13. These preparations for Agency Shop Arbitration caused pilots who objected to the 1992 SGNE to send another form letter to AAA, asking that arbitration be deferred, while a Motion to Intervene in this case was filed by objecting pilots. Attached as Exhibit 2 is a sample of the form letter (as sent by John M. Sharp, a Delta pilot who is included as an Applicant in the pending Motion to Intervene).

14. Neither ALPA nor ALPA agreed to defer arbitration. AAA recently sent a Notice of Arbitration, stating that the proceedings will begin on January 24, 1994. The Arbitration Notice is attached as Exhibit 3.

14. The Arbitrator has decided that in the arbitration:

- (a) there will be no discovery;
- (b) witnesses will not be identified prior to the hearing; and
- (c) exhibits will not be identified prior to the hearing.

15. ALPA's Agency Shop Procedures provide that a pilot "may" (not "must") request arbitration.

16. ALPA, although involved for many years in numerous Agency Shop disputes, has never had an arbitration which ruled upon any SGNE; all ALPA Agency Shop disputes have been in Federal Court.

17. ALPA's Agency Shop procedures provide that arbitration shall be "final and binding", thus precluding any opportunity for judicial review.

18. ALPA contends that arbitration must be exhausted before it is permissible for non-union pilots to begin Agency Shop litigation. ALPA raised this issue in its July, 1992 motion for Summary Judgment. The Court declined to rule on that question.

19. As recently as ALPA's Reply Brief in Support of a Motion to Close Discovery received by Plaintiffs' Counsel on January 14, 1994, ALPA stated it intends to renew its Motion to Dismiss this action, because arbitration has not preceded Agency Shop litigation.

20. Although ALPA's "arbitration-first" claim was raised in July of 1992 (in a Motion for Summary Judgment), this Court will not have ruled on the "arbitration first" claim until after the January 24, 1994 arbitration proceeding is completed.

21. Should this Court require arbitration, the original non-union Plaintiffs and the non-union Intervenors, may be estopped from challenging the 1992 SGNE, because the arbitration will have occurred, without their participation.

22. Plaintiffs and Intervenors will suffer irreparable damage, because their legal right to challenge Agency Shop fees will be denied them, although they began litigation in this Court to challenge Agency Shop fees over two years ago.

23. There is a substantial likelihood of success as to the Plaintiffs' claim that they are not required to participate in arbitration prior to filing Agency Shop litigation.

24. Further, the Arbitration will only address the single question of the SGNE for 1992, and none of the other legal issues raised in this litigation. Therefore, Arbitration is not a substitute for this litigation.

25. The grant of this Preliminary Injunction, only defers Arbitration, and does not bar it. Therefore, no substantial harm is sustained by anyone by the grant of the injunction.

26. The public interest is served by the grant of the injunction, so that this litigation may proceed efficiently, without the forfeiture of any legal rights by the Plaintiffs or Intervenor, and without the usurpation of the jurisdiction of this Court.

WHEREFORE, Plaintiffs respectfully request that this honorable Court enter an Order:

(a) enjoining the proposed AAA arbitration sought by ALAP relating to the 1992 SGNE, until such time as this Court deems appropriate; and

(b) granting such further relief as is appropriate.

Respectfully submitted,

/s/ Philip F. Hudock, Esq.
 PHILIP F. HUDOCK, Esq.
 Bar No. 6130
 Counsel for Plaintiffs
 Suite 600
 8150 Leesburg Pike
 Vienna, Virginia 22182
 (703) 833-8242

Dated: January 18, 1994

EXHIBIT 1

August 26, 1993

CERTIFIED MAIL

Return Receipt Requested

W. John Donnelly, Vice President of Finance
 Air Line Pilots Association
 1625 Massachusetts Avenue, N.W.
 Washington, D.C. 20036

RE: REQUEST FOR ARBITRATION

Dear Mr. Donnelly:

I am a nonunion pilot employed by Delta Air Lines, Inc., and have previously filed an objection to ALPA charging me for nongermane expenses for calendar year 1992.

I received the June 15, 1993 letter from you, stating that the 1992 SGNE was completed, and that my certified letter, requesting arbitration, "must be received at ALPA's offices within 30 days." Your letter was not mailed to me until more than 30 days after June 15, 1993, denying me any opportunity to request arbitration under ALPA Rules. Notwithstanding ALPA's misconduct in making it impossible for me to request arbitration, I still assert my right to challenge the 1992 SGNE.

Your letter states that my request "should state the particular grounds for the objection." Because only ALPA has access to its complete books and records, the U.S. Supreme Court requires me to merely state that I object to all 1992 nongermane expenditures and all 1992 non-expended income. I also object to the arbitration procedure, the denial of Court review of the arbitration, and the lack of any procedure for a common arbitration for all objecting Delta pilots.

This letter is sent to preserve my rights and without waiver of benefits I may have from the pending litigation of *MILLER, et al. v. ALPA, et al.* Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia.

Sincerely,

/s/ Robert A. Miller
ROBERT A. MILLER
 1111B N.W. 133rd Street
 Vancouver, WA 98685

EXHIBIT 2

November 17, 1993

Ms. Donna T. Sankar
 Senior Case Administrator
 American Arbitration Association
 1150 Connecticut Avenue, N.W.
 6th Floor
 Washington, D.C. 20036-4104

Re: 16 673 00277 93DS
 Air Line Pilots Association
 1992 Agency Fee Challenges

Dear Ms. Sankar:

I am a pilot employed by Delta Airlines, Inc. Earlier in the year, I wrote to ALPA objecting to the SGNE for 1992, and requested arbitration to resolve the dispute.

After consideration of my options, I have decided to join as a named plaintiff in the *Miller, et al. v. ALPA et al.* case currently being litigated in the United States District Court for the District of Columbia. As a result of this action, I am requesting that you not proceed with arbitration while the Court considers my intervention motion.

It is my understanding that I will not forfeit any of my rights to request arbitration on this issue or any other at a later date should I desire to do so.

Signed: /s/ John M. Sharp 11-20-93

Printed Name: John M. Sharp

Employee #: 014944

Mailed: 11-22-93

EXHIBIT 3

AMERICAN ARBITRATION ASSOCIATION
 1150 Connecticut Avenue, N.W., 6th Floor
 Washington, D.C. 20036-4104
 Telephone: (202) 296-8510

To the parties:

Re: 16 673 00277 93DS
 Airline Pilots Association
 (Agency Fee Challenges—1992)
 (170 Challengers)

NOTICE OF HEARING

Please Take Notice that a Hearing in the above-entitled Arbitration will be held at the Arbitration Tribunal of the American Arbitration Association,

At: AAA Offices, 1150 Connecticut Avenue, N.W.
 Sixth Floor, Washington, D.C.

Date: January 24 and February 24, 1994

Time: 9:30 a.m.

Before: Louis Aronin, Esq.

Please attend promptly with your witnesses and be prepared to present your proofs.

Dated: January 5, 1994 **DONNA T. SANKAR**
 Senior Case Administrator

Sent to: Arbitrator Louis Aronin
 Union—Elizabeth Ginsburg, Esq.
 170 Challengers

[Filed Jan. 21, 1994]

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA**

 [Title Omitted]

DECLARATION OF ELIZABETH GINSBURG

Elizabeth Ginsburg declares under penalty of perjury:

1. I am an attorney employed by the Air Line Pilots Association (ALPA) in its Legal Department, and I am representing ALPA in the pending arbitration of challenges to its Statement of Germane and Nongermane Expenses (SGNE) for 1992. This arbitration proceeding has been initiated and conducted in accordance with ALPA's Policies and Procedures Applicable to Agency Fees, a copy of which is attached to this declaration as Exhibit A.

2. The 1992 SGNE was dated June 15, 1993, but administrative problems delayed its mailing to pilots until on or about July 26, 1993. Under ALPA policy, eligible agency shop fee payers have thirty days to challenge the SGNE. To allow for mailing time, ALPA accepted any requests for arbitration which were received by September 29.

3. As of September 29, ALPA had received 170 letters which appeared to be valid requests for arbitration by eligible pilots, including letters from the four plaintiffs in this case. Copies of plaintiffs' letters are attached to this declaration as Exhibit B.

4. On September 29, 1993, ALPA sent a letter to all eligible pilots, advising them that their challenge would be submitted to arbitration. Enclosed with this letter was

ALPA's request to the American Arbitration Association (AAA) to initiate an arbitration proceeding. A sample of this correspondence is attached to this declaration as Exhibit C.

5. Ms. Donna Sankar of the AAA acknowledged our request on October 15, 1993, and advised all parties that Louis Aronin had been appointed arbitrator for the matter. A copy of that letter is attached to this declaration as Exhibit D. A copy of the AAA "Rules for Impartial Determination of Union Fees" governing such arbitrations is attached to this declaration as Exhibit E.

6. On October 20, Philip Hudock wrote to the AAA to request that it delay the arbitration until the *Miller* litigation is concluded. Copies of his letter and of my response on behalf of ALPA, opposing any delay of the arbitration process, are attached to this declaration as Exhibits F and G.

7. On November 11, Mr. Hudock again wrote to the AAA, reiterating his request that the arbitration not proceed and asserting that he "could seek an injunction from the U.S. District Court to restrain the arbitration" should the AAA not voluntarily stay the proceedings. Copies of this letter and of my response on behalf of ALPA are attached as Exhibits H and I to this declaration.

8. In a November 22 letter forwarded to the parties and Mr. Hudock, Arbitrator Aronin ruled on a number of procedural questions that had been raised. With regard to the request for a stay, Arbitrator Aronin stated that "[u]nless, and until, the undersigned has been enjoined from proceeding we intend to schedule a hearing, or hearings, as we deem necessary, to obtain the necessary information to determine the propriety of the agency fee payments required of non-members." Copies of his letter and of Ms. Sankar's covering letter are attached to this declaration as Exhibit J.

9. On November 30, 1993, a conference call was initiated by Arbitrator Aronin between him, Mr. Hudock and myself. Arbitrator Aronin explained that he was ready to schedule the arbitration and wanted to know whether Mr. Hudock would represent any parties in the arbitration. Mr. Hudock was noncommittal as to his intentions should the arbitration go forward, reiterating his desire that the matter be stayed and threatening to seek an injunction if no stay was granted. Arbitrator Aronin then set the hearing to commence on January 19. Mr. Hudock inquired as to whether the arbitrator intended to permit discovery, to which Arbitrator Aronin responded in the negative. Contrary to Mr. Hudock's claim in his moving papers, I recall no discussion at all as to whether advance disclosure of witnesses or exhibits would be required. Moreover, at no time has Mr. Hudock or any party to the arbitration requested advance designation of witnesses or exhibits.

10. The arbitration subsequently was rescheduled to begin January 24 because of scheduling conflicts of ALPA witnesses. All parties have been notified in writing of the hearing dates. ALPA's witnesses have set aside those dates in anticipation of the arbitration, and ALPA is prepared and intends to go forward.

11. I am aware that a motion to intervene has been filed in this lawsuit. I have compared the list of proposed intervenors to the list of parties to the arbitration. At least 71 pilots remain parties to the arbitration and are not represented by Mr. Hudock.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date 1/19/94

/s/ Elizabeth Ginsburg
ELIZABETH GINSBURG

EXHIBIT A

ALPA POLICIES AND PROCEDURES APPLICABLE
TO AGENCY FEES

OBJECTION PROCEDURES

1. Nonmembers who are required by contract to pay an agency fee to ALPA as a condition of their employment may object to the use of their fees for purposes that are not germane to collective bargaining. The procedure for submitting an objection is described in paragraph 2 below. Any nonmember who submits an objection in the proper manner will be granted an adjustment in his/her agency fee amount, by reduction and/or rebate, to insure that his/her payment will be used exclusively for purposes germane to collective bargaining.

2. A nonmember wishing to object must send a written notice to the Vice President of Finance, Air Line Pilots Association, 1625 Massachusetts Avenue N.W., Washington, DC 20036. Each objector must send a separate notice in a separate envelope. The notice must contain the objector's name, address and ALPA identification number. A notice of objection may be submitted at any time during the calendar year for which the objection is to apply, but if it is received after May 1, the objector will not receive an advance reduction, but will only receive a rebate after the close of the year. An objection will be valid only for the calendar year in which it is made. An objector may renew his/her objection by sending a notice to the Vice President of Finance during any calendar year in which he/she wishes his/her objection to apply. To insure proof of delivery, objectors are encouraged to use certified mail.

3. No objection under these procedures will be accepted from an ALPA member, and no ALPA member will be eligible for a dues reduction or rebate. ALPA members may express their objections to ALPA expendi-

tures through the democratic processes available to them under ALPA's Constitution.

CALCULATION OF GERMANE
AND NONGERMANE EXPENDITURES

4. The Finance Department shall maintain ALPA's financial records in a manner that will permit a reasonably accurate identification of those categories of expenditure that are germane to collective bargaining and those that are not. ALPA's independent auditors will conduct an annual review of the operation of ALPA's system for recording expenses and allocating them to functional categories. After the close of each year, the Finance Department, under the direction of the General Manager and with the advice of the Legal Department, will prepare a "Statement of Germane and Nongermane Expenditures" which will disclose, in reasonable detail, the year's expenditures, segregating those that were germane to collective bargaining from those that were not.

5. The Statement of Germane and Nongermane Expenditures will be completed on or about June 15 of each year. Promptly thereafter, the Vice President of Finance will send the Statement of Germane and Nongermane Expenditures to each nonmember who is required to pay an agency fee to ALPA. Each such nonmember shall also receive a copy of these Policies and Procedures. The Statement of Germane and Nongermane Expenditures will also be sent to each member of ALPA's Board of Directors.

FEE REDUCTION AND REBATE PROCEDURE

6. Beginning in 1992, the following procedures shall apply:

(a) *Escrow Account* ALPA shall deposit in an interest-bearing escrow account each year an amount equal to 1.5 times ALPA's estimate of its total agency fee re-

bate obligation for that year. ALPA shall base its estimate on the previous years' experience, budget projections for the current year and any other available information. All rebates shall be paid out of the escrow account.

(b) *Lump Sum Rebates* Promptly after the preparation of the Statement of Germane and Nongermane Expenditures each year, any objector who has already paid his/her current year's estimated agency fee obligation in full will receive a prompt rebate, with interest, based on the percentage of nongermane expenditures in the previous year as shown on the Statement of Germane and Nongermane Expenditures.

(c) *Reduction of Monthly Installments* Beginning in July of each year, any objector who is paying monthly installments based on a monthly Statement of Account will receive a billing credit against his/her current year's estimated agency fee. This billing credit will be equal to the percentage of nongermane expenditures of the previous year as shown on the latest Statement of Germane and Nongermane Expenditures. The billing of subsequent monthly installments will be reduced in consideration of the applied billing credit.

(d) *Rebates for Checkoff Payers and Late Objectors* Any objector who elects to pay his/her agency fee obligation by means of checkoff, and any objector whose notice of objection is received after May 1, will receive a rebate based on the percentage of nongermane expenditures shown in the Statement of Germane and Nongermane Expenditures for the current year. This rebate will be made promptly after June 15 of the following year.

(e) *Year-end Adjustments* Each year, after the Statement of Germane and Nongermane Expenditures for the previous year has been prepared, ALPA will compare the agency fee reduction implemented in that year with the actual ratio of germane to nongermane expenditures as

reflected on the Statement of Germane and Nongermane Expenditures for that year. If the fee reductions were insufficient, ALPA will promptly issue additional reductions, or in the case of objectors whose obligations are current, rebates with interest out of the escrow account. If the fee reductions were too large, the objectors will be billed for the excess amount. The objective of these adjustments will be to assure that the agency fee paid by each objector will be no more and no less than his/her prorata share of the germane expenditures for that year.

(f) *Income Information* If the Association does not receive a statement of the objector's income for the previous year from his/her airline before processing year-end adjustments and rebates, the objector will be asked to provide a W-2 form for that year. No rebate will be issued in the absence of a complete and accurate statement of the objector's income for the year during which he/she submitted an objection.

ARBITRATION PROCEDURE

7. Any pilot who believes that ALPA has made an error in its application to him/her of the policies and procedures set forth above may request that his/her complaint be submitted to an independent arbitrator for hearing and decision. A request for arbitration shall contain a brief statement of the issue or issues to be arbitrated, and must be sent to the Vice President of Finance of ALPA by certified mail, return receipt requested, no later than 30 days after the event that is the basis for the complaint. If the pilot so requests, ALPA will place in escrow, pending the outcome of the arbitration, the portion of the pilot's agency fee that ALPA determines to be reasonably in dispute.

8. Unless the parties otherwise agree, the selection of the arbitrator, and the procedures of the arbitration, will be governed by the American Arbitration Association Rules for Impartial Determination of Union Fees. Each side

will bear its own costs of arbitration, including (but not limited to) any travel costs, lost pay and attorneys' fees. ALPA will pay all fees and expenses of the American Arbitration Association and the arbitrator, unless the pilot or pilots participating in the arbitration voluntarily elect to share those fees and expenses.

9. To the extent permitted by law, the decision of the arbitrator shall be final and binding on the parties.

EXHIBIT B

August 18, 1993

CERTIFIED MAIL

Return Receipt Requested

W. John Donnelly, Vice President of Finance
Air Line Pilots Association
1625 Massachusetts Avenue
Washington, D.C. 20036

Re: Request for Arbitration

Dear Mr. Donnelly:

I am a nonunion pilot employed by Delta Air Lines, Inc., and have previously filed an objection to ALPA charging me for nongermane expenses, for calendar year 1992.

I received the June 15, 1993 letter from you, stating that the 1992 SGNE was completed, and that my certified letter, requesting arbitration, "must be received at ALPA's offices within 30 days." Your letter was not mailed to me until more than 30 days after June 15, 1993, denying me any opportunity to request arbitration under ALPA rules. Notwithstanding ALPA's misconduct in making it impossible for me to request arbitration, I still assert my right to challenge the 1992 SGNE.

Your letter states that my request "should state the particular grounds for the objection." Because only ALPA has access to its complete books and records, the U.S. Supreme Court requires me to merely state that I object to all 1992 nongermane expenditures and all 1992 non-expended income. I also object to the arbitration procedure, the denial of timely notice to seek arbitration, the denial of Court review of the arbitration, and the lack of any procedure for a common arbitration for all objecting Delta pilots.

This letter is sent to preserve my rights and without waiver of benefits I may have from the pending litigation of *Miller, et al. v. ALPA, et al.*, Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia.

Sincerely,

/s/ Robert V. Ziminsky
ROBERT V. ZIMINSKY
101 Mason Road
Brookline, NH 03033

#0344192
DAL 009

August 23, 1993

Certified Mail

Return Receipt Requested

Mr. John Donnelly, Vice President of Finance
Air Line Pilots Association
1625 Massachusetts Avenue N.W.
Washington, D.C. 20036

Re: Request for Arbitration

Dear Mr. Donnelly:

I am a nonunion pilot employed by Delta Air Lines, Inc., and have previously filed an objection to ALPA charging me for nongermane expenses for calendar year 1992.

I received the June 15, 1993 letter from ALPA, stating that the 1992 SGNE was completed, and that my certified letter, requesting arbitration, "must be received at ALPA's offices within 30 days." ALPA's letter was not mailed to me until more than 30 days after June 15, 1993, denying me any opportunity to request arbitration within 30 days of completion of the SGNE (as required by ALPA Rules). Notwithstanding ALPA's misconduct in making it impossible for me to request arbitration, I still assert my right to challenge the 1992 SGNE.

ALPA's letter states that my request "should state the particular grounds for the objection." Because only ALPA has access to its complete books and records, the U.S. Supreme Court requires me to merely state that I object to all 1992 nongermane expenditures and all 1992 non-expended income. The burden is on ALPA to prove the expenses are germane. I also object to the arbitration procedure, the denial of timely notice to request arbitration, the denial of Court review of the arbitration, and the lack of any procedure for a common arbitration for all objecting Delta pilots.

This letter is sent to preserve my rights and without waiver of benefits I may have from the pending litigation of *Miller, et al. v. ALPA, et al.*, Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia.

Sincerely,

/s/ Donald Pedrazzini
DONALD PEDRAZZINI

0447979
DAL

Date: August 25, 1993

Certified Mail
Return Receipt Requested

Vice President of Finance
Air Line Pilots Association
1625 Massachusetts Avenue N.W.
Washington, D.C. 20036

Re: Request for Arbitration

Dear Sir:

I am a nonunion pilot employed by Delta Air Lines, Inc., and have previously filed an objection to ALPA charging me for nongermane expenses for calendar year 1992.

I received the June 15, 1993 letter from ALPA, stating that the 1992 SGNE was completed, and that my certified letter, requesting arbitration, "must be received at ALPA's offices within 30 days." ALPA's letter was not mailed to me until more than 30 days after June 15, 1993, denying me any opportunity to request arbitration within 30 days of completion of the SGNE (as required by ALPA Rules). Notwithstanding ALPA's misconduct in making it impossible for me to request arbitration, I still assert my right to challenge the 1992 SGNE.

ALPA's letter states that my request "should state the particular grounds for the objection." Because only ALPA has access to its complete books and records, the U.S. Supreme Court requires me to merely state that I object to all 1992 nongermane expenditures and all 1992 non-expended income. The burden is on ALPA to prove the expenses are germane. I also object to the arbitration procedure, the denial of timely notice to request arbitration, the denial of Court review of the arbitration, and the lack of any procedure for a common arbitration for all objecting Delta pilots.

This letter is sent to preserve my rights and without waiver of benefits I may have from the pending litigation of *Miller, et al. v. ALPA, et al.*, Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia.

Sincerely,

/s/ Kenneth L. Shackelford
 Print Name: Kenneth L. Shackelford
 Address: 71 Thaynes Canyon Dr.
 Park City, Utah 84060

August 26, 1993

CERTIFIED MAIL
Return Receipt Requested

W. John Donnelly, Vice President of Finance
 Air Line Pilots Association
 1625 Massachusetts Avenue, N.W.
 Washington, D.C. 20036

RE: REQUEST FOR ARBITRATION

Dear Mr. Donnelly:

I am a nonunion pilot employed by Delta Air Lines, Inc., and have previously filed an objection to ALPA charging me for nongermane expenses for calendar year 1992.

I received the June 15, 1993 letter from you, stating that the 1992 SGNE was completed, and that my certified letter, requesting arbitration, "must be received at ALPA's offices within 30 days." Your letter was not mailed to me until more than 30 days after June 15, 1993, denying me any opportunity to request arbitration under ALPA Rules. Notwithstanding ALPA's misconduct in making it impossible for me to request arbitration, I still assert my right to challenge the 1992 SGNE.

Your letter states that my request "should state the particular grounds for the objection." Because only ALPA has access to its complete books and records, the U.S. Supreme Court requires me to merely state that I object to all 1992 nongermane expenditures and all 1992 non-expended income. I also object to the arbitration procedure, the denial of Court review of the arbitration, and the lack of any procedure for a common arbitration for all objecting Delta pilots.

This letter is sent to preserve my rights and without waiver of benefits I may have from the pending litigation of *MILLER, et al. v. ALPA, et al.* Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia.

Sincerely,

/s/ Robert A. Miller
 ROBERT A. MILLER
 1111B N.W. 133rd Street
 Vancouver, WA 98685

EXHIBIT C

AIR LINE PILOTS ASSOCIATION
 1625 Massachusetts Avenue, N.W.
 Washington, D.C. 20036
 (703) 689-2270

September 29, 1993

Kevin L. Shaughnessey
 R.R. 2—606 Croquette Circle
 Rowell Hill
 New London, NH 03257

Dear Mr. Shaughnessey:

ALPA has received your letter challenging the Statement of Germane and Nongermane Expenditures (SGNE) for 1992. Contrary to your assumption, ALPA measures the time for requesting arbitration of such challenges from the date on which the SGNE is mailed, not the date that appears on ALPA's cover letter. We also allow a reasonable additional time for receipt of the SGNE. Therefore, we are treating your letter as a timely request for arbitration. If this is not your desire, please let us know in writing as soon as possible and we will withdraw your name from the arbitration.

We have received letters like yours from a number of other pilots, and we have delayed responding until we are able to respond to all of them simultaneously.

In accordance with ALPA's practice, we will hold one consolidated arbitration proceeding. A copy of ALPA's request to the American Arbitration Association to appoint an arbitrator is enclosed.

Your letter states various objections to ALPA's arbitration procedure, none of which we believe to be valid.

However, you may assert these objections before the arbitrator if you wish.

Sincerely,

ELIZABETH GINSBURG
Attorney

Enclosure

AIR LINE PILOTS ASSOCIATION

1625 Massachusetts Avenue, N.W.

Washington, D.C. 20036

(703) 689-2270

September 29, 1993

Ms. Donna T. Sankar

Labor Supervisor

American Arbitration Association

1150 Connecticut Avenue, N.W.

Sixth Floor

Washington, D.C. 20036-4104

Dear Ms. Sankar:

The Air Line Pilots Association has received challenges to its 1992 agency shop fees on a variety of grounds from the pilots listed in the attached Appendix. These challenges are subject to arbitration under the AAA's Rules for Impartial Determination of Union Fees. We request that an arbitrator be appointed in accordance with those Rules. We also request that proceedings in this matter be held in the Washington area, where ALPA's attorneys and staff are located and where all the relevant records are stored.

Sincerely,

/s/ Elizabeth Ginsburg
ELIZABETH GINSBURG
Attorney, Legal Department

cc: [see Appendix]

EXHIBIT D

AMERICAN ARBITRATION ASSOCIATION
1150 Connecticut Avenue, N.W., 6th Floor
Washington, D.C. 20036-4104
Telephone: (202) 296-8510

October 15, 1993

Re: 16 673 00277 93DS
Air Line Pilots Association
(Agency Fee Challenges—1992)
(170 Challengers)

To all parties:

This will acknowledge receipt of a letter dated September 29, 1993, from the Union, requesting arbitration in accordance with the AAA Rules for the Impartial Determination of Union Fees. We assume copies of the letter have been forwarded to the Challengers. Enclosed for all parties is a copy of the Rules.

The Association, pursuant to Section 3 of the Rules, has to appoint Louis Aronin, Esq., as the Arbitrator in this matter.

We note the Union has requested that the proceedings in this arbitration be held in Washington, D.C.

Please note that Section 19 of the Rules provide for the waiver of oral hearings. Accordingly, and inasmuch as the parties are not all located in the same geographic area, Arbitrator Aronin has suggested that the parties may choose to present their case by written statements. If you choose to submit your case by written statements, instead of appearing in person, please advise this office on or before *October 25, 1993*.

If you have any questions, please call this office.

Sincerely yours,

/s/ Donna T. Sankar
DONNA T. SANKAR
Senior Case Administrator

* * * *

EXHIBIT E

Rules for
Impartial Determination
of Union Fees

*as Amended
and in Effect
January 1, 1988*

American Arbitration Association
140 West 51st Street, New York, NY 10020-1203
Telephone: (212) 484-4000

Introduction

In *Chicago Teachers Union v. Hudson*, the Supreme Court of the United States held that a labor union which charges nonmember employees an agency fee to defray the cost of providing service is required to give them "an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, and an escrow for the amounts reasonably in dispute while challenges are pending."

These Rules for Impartial Determination of Union Fees have been developed by the American Arbitration Association to provide "expeditious, fair, and objective" determinations of such challenges.

The American Arbitration Association (AAA) is a public-service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

When a union requests administration under these rules, the AAA will appoint an impartial arbitrator, who is experienced in employment relations.

These challenges could involve determinations about local, statewide, or national fees. The burden is upon the union to justify whatever fees are being disputed. Sometimes, such issues can be determined on the basis of documents. If a hearing is necessary, it should be held promptly so

that the arbitrator can comply with the time limits contained in the union's internal procedures and with applicable law. Arbitrators must accompany their awards with a written explanation of their determination.

The AAA is also prepared, at the request of the union, to hold a portion of the challenged union fees in escrow during the pendency of the challenge procedure.

TABLE OF CONTENTS

Page

1. Application of Rules	
2. Initiation of Arbitration	
3. Appointment of Arbitrator	
4. Disclosure of Grounds for Disqualification	
5. Vacancies	
6. Notification of Proceedings	
7. Representation	
8. Stenographic Record	
9. Attendance at Hearings	
10. Adjournment	
11. Oaths	
12. Order of Proceedings	
13. Arbitration in the Absence of a Party	
14. Evidence	
15. Evidence by Affidavit and Filing of Documents.....	
16. Closing of Hearings	
17. Reopening of Hearings	
18. Waiver of Rules	
19. Waiver of Oral Hearings	
20. Extensions of Time	
21. Serving of Notice	
22. Communication with Arbitrator	
23. Time of Award	
24. Form of Award	
25. Delivery of Award	
26. Judicial Proceedings	
27. Administrative Fee	
28. Expenses	
29. Arbitrator Compensation	
30. Interpretation and Application of Rules	

Rules for Impartial Determination of Union Fees

1. Application of Rules

A union may obtain administration under these rules by requesting the AAA to appoint an arbitrator to determine the appropriate amount of a union fee in one or more of its bargaining units. These rules shall apply subject to and in accordance with the applicable statutory law and the internal procedures of the union involved.

2. Initiation of Arbitration

To initiate an arbitration under these rules, a union shall notify the AAA that challenges of its fees have been received from one or more individual employees, which are to be determined by an impartial arbitrator. The letter of notification shall identify the unions involved and the names and addresses of the individuals who have challenged the union fee or who, in accordance with applicable law or the organization's internal procedures, should be notified of the proceedings. The union and the challengers are hereinafter referred to collectively as the parties.

The letter of notification should describe the issues involved and notify the AAA of any relevant time limits contained in the applicable law or the union's internal procedures. The initiating letter may suggest an appropriate location for hearing.

3. Appointment of Arbitrator

Upon receiving such an initiating letter, the AAA will appoint an arbitrator from a special panel of arbitrators experienced in employment relations who is willing to hear and decide such issues in accordance with applicable law and the union's internal procedures, and who is prepared to meet the applicable time limits. The AAA will notify the parties of the arbitrator's appointment.

4. Disclosure of Grounds for Disqualification

Prior to accepting the appointment, a prospective arbitrator shall disclose any circumstance likely to create a presumption of bias. In its discretion, the AAA may disqualify an arbitrator based on such disclosure. After the parties in the procedure are notified of an appointment, they may challenge an arbitrator for cause by promptly notifying the AAA of their objection.

5. Vacancies

If for any reason an arbitrator should be unable to perform the duties of office, the AAA may, in its discretion, declare the office vacant and appoint a substitute.

6. Notification of Proceedings

Notice of the time and place of the arbitration hearing, as determined by the arbitrator, will be mailed to the parties by the AAA, at least 14 days in advance of the hearing.

7. Representation

Any party may be represented by counsel or by another authorized representative.

8. Stenographic Record

Any party wishing a stenographic record shall make such arrangements directly with the stenographer, notifying the AAA in advance of the hearing. If such a transcript is determined by the arbitrator to be the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a time and place determined by the arbitrator.

9. Attendance at Hearings

The arbitrator shall maintain the confidentiality of the hearings unless the law provides to the contrary. Persons having a direct interest in the arbitration are entitled to

attend hearings. The arbitrator shall have the power to require the retirement of any witness during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

10. Adjournment

The arbitrator may for good cause shown adjourn a hearing upon the request of a party or upon the arbitrator's own initiative, but must observe all applicable time limits.

11. Oaths

The arbitrator may require witnesses to testify under oath.

12. Order of Proceedings

The arbitrator shall determine how the case can best be presented so that all parties have a fair opportunity to contest the issues. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record. The arbitrator shall afford full opportunity for presentation of relevant proofs.

13. Arbitration in the Absence of a Party

The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. The arbitrator shall require the parties present to submit such evidence as may be necessary for the making of a determination.

14. Evidence

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

15. Evidence by Affidavit and Filing of Documents

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objection made to its admission. Parties shall be afforded an opportunity to examine all documents submitted in the proceedings. Documents not filed with the arbitrator at the hearing, but which are with the arbitrator at the hearing, but which are arranged to be submitted late, shall be filed with the AAA for transmission to the arbitrator.

16. Closing of Hearings

The arbitrator shall determine when sufficient evidence has been submitted for an understanding and determination of the dispute. At that point, the arbitrator may declare the hearings closed. If briefs or other documents are to be filed, the hearings may be declared closed as of a later date set by the arbitrator. The time limit within which the arbitrator is required to make an award shall be that contained in the applicable law and the union's internal procedures. If no specific date is fixed, the arbitrator shall have 30 days from the closing of hearings within which to make an award.

17. Reopening of Hearings

The hearings may be reopened by the arbitrator at will or on the motion of any party, for good cause shown, at any time before the award is made, but, if the reopening of the hearings would prevent the making of the award within the time specified in the applicable law and the union's internal procedures, the matter may not be reopened.

18. Waiver of Rules

Any party who proceeds after knowledge that any provision or requirement of these rules has not been complied

with, and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

19. Waiver of Oral Hearings

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the arbitrator shall specify a fair and equitable procedure.

20. Extensions of Time

The arbitrator for good cause may extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any such extension of time.

21. Serving of Notice

Each party shall be deemed to have consented and shall consent that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules may be served by mail to the party's last known address or by personal service.

22. Communication with Arbitrator

There shall be no communication between the parties and the arbitrator other than at oral hearings. Written communications from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

23. Time of Award

The award shall be rendered promptly by the arbitrator and, unless otherwise specified by the applicable law and the union's internal procedures, not later than 30 days from the date of closing the hearings, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

24. Form of Award

The award of the arbitrator shall be in writing and signed and shall be accompanied by a written explanation of the arbitrator's decision.

25. Delivery of Award

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to each party's last known address or the filing of the award in any other manner that may be prescribed by applicable law and the union's internal procedures.

26. Judicial Proceedings

Neither the AAA nor the arbitrator is an appropriate or necessary party in judicial proceedings relating to this procedure and neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any procedure conducted under these rules.

27. Administrative Fee

As a not-for-profit organization, the AAA shall charge a fee payable by the union to compensate the AAA for the cost of providing necessary administrative services.

28. Expenses

The expense of witnesses shall be paid by the party producing such witnesses.

29. Arbitrator Compensation

The arbitrator will be compensated by the union, in accordance with the per-diem rate currently on file for that arbitrator with the AAA, and shall be reimbursed for expenses.

30. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by the AAA.

To order additional copies of these rules or to ask questions about them, call the AAA office nearest you. A list of these offices appears on the back page of this pamphlet.

* * * *

EXHIBIT F

PHILIP F. HUDOCK
Attorney at Law
Suite 600
8150 Leesburg Pike
Vienna, Virginia 22182

(703) 883-8242

October 20, 1993

Via Facsimile #202-872-9571

Ms. Donna T. Sankar
Senior Case Administrator
American Arbitration Association
1150 Connecticut Avenue N.W.
Sixth Floor
Washington, D.C. 20036-4104

Re: 16 673 00277 93DS
Air Line Pilots Association
1992 Agency Fee Challenges

Dear Ms. Sankar:

I am in receipt of a letter from ALPA to you dated September 29, 1993, requesting arbitration of challenges to 1992 Agency Shop fees. I also have copies of your letter of October 15, 1993 to pilots who objected to 1992 Agency Shop fees. That letter identifies the appointment of Louis Aronin as Arbitrator and contains Arbitrator Aronin's "suggestion" that the parties waive their rights to an oral hearing and "present their case by written statements."

I assume that ALPA has not disclosed to AAA that it is the Defendant in the United States District Court for the District of Columbia in agency shop litigation, which challenges every aspect of the 1992 Agency Shop fees. The case is captioned as *Miller, et al. v. ALPA, et al.*, Civil Action No. 91-3161. The case is assigned to Judge Norma H. Johnson. I am Plaintiffs' counsel in that litigation.

In the litigation, ALPA moved for summary judgment to have the case dismissed, and Agency Shop fees decided by arbitration. ALPA's brief states, as page 21:

"... if [the pilots] are dissatisfied with ALPA's determination [of 1992 agency shop fees], they must seek relief through the arbitration remedy provided in ALPA's 'Policies and Procedures Applicable to Agency Fees.' Only if they are dissatisfied with the result of such an arbitration may they bring a lawsuit."

Judge Johnson, by decision dated August 2, 1993, denied summary judgment, to the extent ALPA sought to have the case dismissed and the matter proceed by arbitration. Discovery is now ongoing in the litigation, with the expectation that the Judge will rule as to all matters relating to 1992 Agency Shop fees.

I assume it is not AAA's practice to be a party to arbitration as to matters that are then pending in court, where the Court has refused to stay the litigation (so that arbitration may proceed). Such arbitration would be direct interference with the Court's jurisdiction and conflict with the Court's ruling. Further, it would be particularly inappropriate for AAA to proceed with arbitration, where the pilots here specifically told ALPA that they were objecting to the 1992 Agency Shop fees, not because they wanted arbitration, but rather:

"... to preserve my rights and without waiver of benefits I may have from the pending litigation of *Miller, et al. v. ALPA, et al.*, Civil Action No. 91-3161, in the U.S. District Court for the District of Columbia."

In these circumstances, I believe the prudent course for AAA is to decline to participate in arbitration, and allow the present litigation to proceed.

Sincerely,

/s/ Philip F. Hudock
PHILIP F. HUDOCK

PHF:dm

cc: Elizabeth Ginsburg, Esq.
Legal Department, ALPA

EXHIBIT G

AIR LINE PILOTS ASSOCIATION
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(703) 689-2270

October 21, 1993

Ms. Donna T. Sankar
Labor Supervisor
American Arbitration Association
1150 Connecticut Avenue, N.W.
Sixth Floor
Washington, D.C. 20036-4104

Dear Ms. Sankar:

The purpose of this letter is to respond to the letter sent to you by Philip F. Hudock, dated October 20, 1993. As Mr. Hudock states, he is the attorney for the plaintiffs in a lawsuit against ALPA raising various issues relating to agency fees. Four of Mr. Hudock's clients are also parties to the present arbitration proceeding. They are: Robert A. Miller, Donald Pedrazzini, Kenneth L. Shackelford, and Robert V. Ziminsky. Mr. Hudock did not expressly state that his letter was written on behalf of these four individuals, but we presume that it was. However, to our knowledge Mr. Hudock does not represent any of the other pilots who are parties to this arbitration proceeding.

We also understand from his letter that Mr. Hudock's clients do not wish to participate in the pending arbitration, and they are of course free to withdraw from it. However, there is no basis for halting the entire proceeding. First, except for Mr. Hudock's four clients, none of the other pilots in this case are parties to Mr. Hudock's lawsuit, and each of them has the right to arbitration under ALPA's Policies and Procedures Applicable to

Agency Fees. Second, contrary to Mr. Hudock's suggestion, Judge Johnson has not ruled on the issue of whether this or any other arbitration should proceed. Indeed, she did not even rule on ALPA's contention that the lawsuit should be dismissed pending arbitration. Rather, she denied that aspect of ALPA's motion for summary judgment "without prejudice to renewal following further proceedings, including the additional round of discovery." A copy of her decision is enclosed for your review. Finally, there is no basis for Mr. Hudock's "expectation that the Judge will rule as to all matters relating to 1992 Agency Shop fees."

ALPA will not compel any pilot to participate in this arbitration who does not wish to participate. On the contrary, ALPA's policies and procedures make arbitration available only to those pilots who affirmatively request it. Therefore, Mr. Hudock's clients, as well as all other parties to the arbitration, are free to withdraw from the proceeding if they wish to do so. However, unless *all* of the pilots withdraw, which seems quite unlikely, the arbitration should go forward.

Thank you for your assistance in this matter.

Sincerely,

/s/ Elizabeth Ginsburg
ELIZABETH GINSBURG

EG:tam

Enclosures

cc: Philip F. Hudock, Esq.

bcc: Suzanne Kalfus

EXHIBIT H

PHILIP F. HUDOCK
 Attorney at Law
 Suite 600
 8150 Leesburg Pike
 Vienna, Virginia 22182

(703) 883-8242

November 11, 1993

Via Facsimile #202-872-9571

Ms. Donna T. Sankar
 Senior Case Administrator
 American Arbitration Association
 1150 Connecticut Avenue N.W.
 Sixth Floor
 Washington, D.C. 20036-4104

Re: 16 673 00277 93DS
 Air Line Pilots Association
 1992 Agency Fee Challenges

Dear Ms. Sankar:

I wrote to you on October 20, 1993, concerning the ALPA request for arbitration as to agency shop fees. This letter spawned a reply from ALPA's counsel, Elizabeth Ginsburg, dated October 21, 1993. In that letter, Ms. Ginsburg stated that:

"Four of Mr. Hudock's clients are also parties to the present arbitration proceeding. They are: Robert A. Miller, Donald Pedrazzini, Kenneth L. Shackelford, and Robert V. Ziminsky. Mr. Hudock did not ex-

pressly state that his letter was written on behalf of these four individuals, but we presume that it was. However, to our knowledge Mr. Hudock does not represent any of the other pilots who are parties to this arbitration proceeding."

Ms. Ginsburg letter acknowledges that my four clients do not wish to participate in the arbitration, and that they are free to withdraw from arbitration. She adds:

"However, there is no basis for halting the entire proceeding. First, except for Mr. Hudock's four clients, none of the other pilots in this case are parties to Mr. Hudock's lawsuit, and each of them has the right to arbitration under ALPA's Policies and Procedures Applicable to Agency Fees."

Since my letter of October 20, 1993, and after other pilots became aware of my clients' position as to arbitration, I have received multiple requests from pilots to intervene as additional parties plaintiff in my clients' agency shop lawsuit.

It is my intent to file a motion with the United States District Court for the District of Columbia, for the intervention of these pilots. I prefer to present a single motion on behalf of all who seek to intervene (as opposed to a series of intervention requests). If all the pilots who have challenged the 1992 SGNE of ALPA seek intervention in the litigation, there will be no one left for ALPA to arbitrate with. I hope to know shortly exactly how many do wish to join the litigation.

Because parties to the arbitration are opting for litigation, I think it inappropriate for AAA to press forward with the arbitration until the Court has ruled on the intervention request. Thus, I repeat my prior request that the arbitration not proceed at this juncture.

Should AAA not be willing to voluntarily hold the arbitration in abeyance, I could seek an injunction from

the U.S. District Court to restrain the arbitration, since the issue of ALPA agency shop fees under the 1992 SGNE is before the Court. Since AAA's goal is to simplify dispute resolution, rather than make it more difficult, I assume AAA will concur in a hiatus of the arbitration activity at this time.

Sincerely,

/s/ Philip F. Hudock
PHILIP F. HUDOCK

PFH:dm

cc: Elizabeth Ginsburg, Esq.
Legal Department, ALPA

EXHIBIT I

AIR LINE PILOTS ASSOCIATION
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

November 11, 1993

Ms. Donna Sankar
American Arbitration Association
1150 Connecticut Avenue—Sixth Floor
Washington, D.C. 20036-4104

Re: 16-673-00277-93DS

Dear Ms. Sankar:

I have received a copy of Mr. Hudock's latest letter to you, dated November 11. Once again, Mr. Hudock is asking AAA "to hold the arbitration in abeyance" because of a pending lawsuit against ALPA in which he represents the plaintiffs, four of whom are also parties to this arbitration. Mr. Hudock now states that he intends to file a motion to intervene in that lawsuit on behalf of a number of other pilots who are parties to this arbitration. He asserts that, "[i]f all the pilots who have challenged the 1992 SGNE of ALPA seek intervention in the litigation, there will be no one left for ALPA to arbitrate with." He also states that he "could seek an injunction . . . to restrain the arbitration."

As ALPA made clear in response to Mr. Hudock's previous letter, any pilot who does not wish to participate in this arbitration is free to withdraw from it. This is true for Mr. Hudock's clients as well as any other pilot who is currently a party to the arbitration. But the pendency of Mr. Hudock's lawsuit, by itself, is not a basis for suspending the arbitration, no matter how many pilots seek to intervene in it.

Mr. Hudock has the right to seek an injunction if he deems it appropriate, but we doubt that the court would grant such an injunction. In any event, unless and until a court of competent jurisdiction orders otherwise, this arbitration should go forward in accordance with the AAA rules.

Sincerely,

/s/ Elizabeth Ginsburg
ELIZABETH GINSBURG

cc: Philip F. Hudock, Esq.

EXHIBIT J

LOUIS ARONIN
Arbitrator

Canton Cove, Suite 315
2901 Boston Street
Baltimore, MD 21224

(410) 732-1351

November 22, 1993

Ms. Donna T. Sankar, Senior Case Administrator
American Arbitration Association
1150 Connecticut Ave., NW
Washington, D.C. 20036-4104

Re: 16 673 00277 93 DS
Air Line Pilots Association
Agency Fee Challengers—1992

Dear Ms. Sankar:

A number of the challengers who have objected to the agency fee charged by the Air Line Pilots Association have raised procedural questions requiring a response. Please send copies of this letter to counsel for the Air Line Pilots Association, Mr. Hudock, counsel for a number of challengers, and to the challengers listed in your correspondence.

Since the Air Line Pilots Association has agreed to have its policies and procedures relating to non-members' agency fees determined pursuant to the American Arbitration Association rules for "Impartial Determination of Union Fees," and in light of the fact that the procedure of the American Arbitration Association arose from the court decision in *Chicago Teachers Union v. Hudson* we are able to provide the following answers:

1. The burden of establishing that the expenditures were for purposes germane to the performance of representa-

tional functions and/or collective bargaining rests with the Air Line Pilots Association.

2. The number of challengers who wish to proceed with the arbitration is not relevant because pursuant to those rules so long as one non-member agency fee payer files a timely challenge we shall proceed to determine whether that fee did comply with all relevant laws and court decisions dealing with agency fees.

3. Whether the agency fee payer may seek redress through another forum, i.e. the courts, is not relevant for our purposes. Unless, and until, the undersigned has been enjoined from proceeding we intend to schedule a hearing, or hearings, as we deem necessary, to obtain the necessary information to determine the propriety of the agency fee payments required of non-members.

4. We do not believe our charter includes a role or right to determine whether a valid collective bargaining agreement existed to permit the agency fee or whether that arrangement required a vote of any group as a condition precedent to collection of agency fees.

5. The rules governing this arbitration proceeding are not those of the locale where the arbitration is heard. The rules are determined by Federal courts that have ruled on agency fees, administrative bodies, e.g. NLRB, NMB & Dept. of Labor, and the appropriate rules of the American Arbitration Association.

We hope that this will respond to most questions raised by challengers and counsel.

In the near future we shall determine the date and location of the hearing(s) deemed necessary to ascertain the facts and contentions involved in this matter.

Sincerely,

/s/ Louis Aronin
LOUIS ARONIN

AMERICAN ARBITRATION ASSOCIATION

1150 Connecticut Avenue, N.W., 6th Floor

Washington, D.C. 20036-4104

Telephone (202) 296-8510

November 24, 1993

Re: 16 673 00277 93DS

Air Line Pilots Association

(Agency Fee Challenges—1992)

(170 Challengers)

To all parties:

This will acknowledge receipt of the following:

1. Craig A. Sherman's letter dated 10/30/93, a copy of which we note was sent to the Union.
2. Willard F. Ice, Jr.'s letter dated 11/12/93, advising he is retracting from this arbitration.
3. D. F. Waldron's facsimile of 11/17/93.
4. Dennis E. Gruelich's letter dated 11/17/93.
5. Robert E. Scheinblum's letter dated 11/20/93.
6. John Fred Johnson's letter dated 11/19/93, withdrawing from this arbitration.
7. R. H. Geterman's letter dated 11/20/93, withdrawing from this arbitration.
8. Michael T. Hannan's letter dated 11/19/93, withdrawing from this arbitrator. We note a copy of the letter was sent to the Union.

At this time copies of the above letters are being sent to the Arbitrator and the Union.

This will also acknowledge receipt of a letter dated November 22, 1993, from Arbitrator Aronin, copies of which

are now enclosed for the Union, Mr. Hudock and all Challengers.

We again remind all parties that any correspondence sent to this office shall be copied to *the Union*.

Sincerely yours,

/s/ Donna T. Sankar
DONNA T. SANKAR
Senior Case Administrator

Enclosures: a/s

cc: Arbitrator Louis Aronin;
Union:—Elizabeth Ginsburg, Esq.;
Philip F. Hudock, Esq.;
170 Challengers.

[Filed Jan. 21, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

SUPPLEMENT TO MOTION TO INTERVENE

Pursuant to F.R.Civ.P. 24, this Supplement is filed to the Motion to Intervene, which was served on January 7, 1994. The purpose of this Supplement is to add 12 additional "Applicants" who seek to intervene as party plaintiffs.

1. The original Motion to Intervene was filed on behalf of 142 pilots ("Applicants"), who sought to intervene as Plaintiffs in this agency shop, labor law litigation.

2. 12 additional individuals (the "Additional Applicants") wish to intervene, but were not included in the original Motion to Intervene.

3. The 12 Additional Applicants are nonunion pilots, employed by Delta. Their status in this litigation is identical to the other nonunion Delta pilots (who are either original Plaintiffs or Applicants listed in the original Motion to Intervene).

4. The Additional Applicants are identified in attached Pages 10A and 11 to the Second Amendment to the Complaint (as Applicant Nos. 143-154). Pages 10A and 11 replace Page 10.

5. The total number of Applicants is 154, of which 152 are pilots employed by Delta, and two are pilots employed by USAir.

WHEREFORE, the relief requested in the original Motion to Intervene is sought for the 12 Additional Applicants identified in this Supplement.

Dated: January 19, 1994

Respectfully submitted,

/s/ Philip F. Hudock
 PHILIP F. HUDOCK, ESQ.
 Bar No. 6130
 Counsel for Plaintiffs
 Suite 600
 8150 Leesburg Pike
 Vienna, Virginia 22182
 (703) 883-8242

[Certificate of Service Omitted]

[Filed Jan. 24, 1994]

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

 [Title Omitted]

ORDER

This case comes before the Court on plaintiffs' motion for a preliminary injunction. Plaintiffs are nonunion pilots employed by Delta Air Lines who brought this suit in 1991 to challenge, *inter alia*, the calculations upon which defendant Air Line Pilots Association ("ALPA") bases the fees it charges nonunion pilots.

In *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the Supreme Court held that the First Amendment requires a union to give nonunion employees an adequate explanation of the basis for the collective bargaining fee that the union, as their exclusive bargaining agent, charges them. ALPA annually prepares a Statement of Germane and Nongermane Expenditures ("SGNE") that describes ALPA's activities and expenses during the year. The SGNE divides the expenditures into two categories, those that are germane to collective bargaining and those that are not. On June 15, 1993, ALPA completed the SGNE for 1993. In response to objections by plaintiffs and other nonunion pilots to the SGNE calculation, ALPA contacted the American Arbitration Association ("AAA") to arrange for arbitration of the dispute. Several objecting pilots requested both AAA and ALPA to delay arbitration until the Court could rule on a motion to intervene in this action, filed by 141 nonunion pilots on January 10, 1994. Neither AAA nor ALPA agreed to delay the arbitration, which is currently

scheduled to begin at 9.30 a.m. on January 24, 1994. Plaintiffs seek a preliminary injunction preventing the arbitration from going forward.

A preliminary injunction is an extraordinary equitable remedy that may be granted only upon a clear showing of entitlement. In order to obtain preliminary injunctive relief, a plaintiff must demonstrate:

- (1) that the plaintiff will suffer irreparable injury if injunctive relief is not granted,
- (2) a strong showing that the plaintiff is likely to prevail on the merits,
- (3) that an injunction would not substantially harm other interested parties, and
- (4) that an injunction would not significantly harm the public interest.

Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). On the first of these elements plaintiffs have clearly failed to carry their burden. As plaintiffs themselves explain in their memorandum, they face the following two alternatives:

- Ignore the January 24th arbitration, and risk the possibility of a *later* Court ruling that participating in the arbitration was a mandatory condition precedent to Ag[en]cy Shop litigation (thus waiving the right to Ag[en]cy Shop litigation); or
- Participate in the arbitration, and find in a *later* Court ruling that participation was *not* a mandatory condition precedent to Agency Shop litigation (i.e. the time and money spent on arbitration was wasted).

Pls.' Mem. in Support of Mot. for Prelim. Inj. at 2. The first of these alleged harms appears to be the most serious. Yet even if the Court assumes, for the sake of argument, that plaintiffs will indeed "waiv[e] the right" to pursue this

litigation if they "[i]gnore the January 24th arbitration," such harm would not be sufficient grounds for granting a preliminary injunction. If plaintiffs choose to ignore the arbitration and thereby waive their right to pursue this suit, then any harm that results will flow from their own chosen course of action. Plaintiffs could easily avoid this harm by participating in the arbitration. Such harm therefore cannot justify the issuance of a preliminary injunction. See *FIBA Leasing Co. v. Airdyne Indus.*, 826 F. Supp. 38, 39 (D. Mass. 1993) ("A preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted.").

If plaintiffs do participate in the arbitration, then according to their own reasoning the greatest harm they can suffer will be to "waste" time and money. This is not the sort of grievous harm that can justify the extraordinary equitable remedy plaintiffs seek. A party that moves for a preliminary injunction bears the burden of showing that the injury the party will suffer is "both certain and great." *Wisconsin Gas Co. v. Federal Energy Regulatory Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985). Here, plaintiffs have not even described how much time or money they will "waste" if they participate in the arbitration. Even more importantly, however, plaintiffs must show that the injury will be impossible to correct or redress after it occurs: "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Virginia Petroleum Jobbers*, 259 F.2d at 925. Plaintiffs have failed to show that a later award of money damages will be insufficient to compensate them for any time or money they might "waste" on January 24. Their claim of irreparable harm is therefore inadequate.

Plaintiffs have also failed to meet their burden with respect to the other factors set forth in *Virginia Petroleum Jobbers*. A strong showing that plaintiffs are likely to succeed on the merits of their claim is necessary to jus-

tify the exaraordinary equitable relief they seek, but plaintiffs have not made such a showing. Nor have plaintiffs demonstrated that an injunction would not harm other parties or the public interest. Indeed, defendants argue that postponement of the arbitration at this late date would seriously inconvenience many persons who plan to participate, and they also point out that plaintiffs learned of the arbitration in October and yet took no action before this week. Accordingly, it is this 24th day of January, 1994,

ORDERED that plaintiffs' motion for a preliminary injunction be, and hereby is, denied.

/s/ Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
United States District Judge

[Filed Dec. 8, 1994]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

ORDER

This matter is before the Court on defendant ALPA's suggestion of mootness, plaintiffs' motion to have 154 pilots intervene as plaintiffs, and the motion of plaintiff Donald Pedrazzini to withdraw. Upon consideration of the motions, responses, arguments of counsel at status hearing, and the entire record herein, the Court will deny the suggestion of mootness, grant the motion of Pedrazzini to withdraw, and grant in part and deny in part the motion to intervene.

Five months after the Court denied plaintiffs' class certification, plaintiffs filed the present motion for intervention on behalf of 154 pilots who plaintiffs claim would have been the class. Defendant ALPA does not contest the motion to intervene with respect to some of the pilots. ALPA does, however, object to the intervention of the following pilots: (1) those who are members of ALPA, (2) those who failed to object to the payment of agency fees not germane to collective bargaining, (3) those who are employees of USAir, and (4) those whose status with respect to the arbitration differs from that of the plaintiffs. Because ALPA only objects to the four groups of pilots stated above, and because the Court determines that the remaining pilots satisfy the requirements for intervention, the Court will allow those pilots to whom ALPA did not object to intervene without further discussion.

With respect to the four groups of pilots to whom ALPA has objected, the Court must apply Rule 24 of the Federal Rules of Civil Procedure. Intervention may be of right or permissive. Fed. R. Civ. P. 24(a), (b). The grounds for intervention of right are: (1) timeliness, (2) cognizable interest, (3) impairment, and (4) lack of adequate representation. Fed. R. Civ. P. 24(a); *see also Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72, 74 (D.C. Cir. 1988). The grounds for permissive intervention are: (1) timeliness, (2) common questions of law or fact, and (3) no undue delay or prejudice to the original parties. Fed. R. Civ. P. 24(b).

The Court of Appeals for this Circuit has stated, "[a]n application to intervene should be viewed on the tendered pleadings—that is, whether those pleadings allege a legally sufficient claim or defense and not whether the applicant is likely to prevail on the merits." *Williams & Humbert*, 840 F.2d at 75. The Court finds that ALPA's objections to intervention with respect to the pilots who did not object and the pilots who may have a different arbitration status are objections to the pilots' likelihood of prevailing on the merits and thus are not valid objections to intervention. The Court finds that those pilots satisfy the requirements for intervention stated above. *See McCarthy v. Kleindienst*, 562 F.2d 1269 (D.C. Cir. 1977).

With respect to the pilots who are ALPA members and the pilots who are employed by USAir, namely Eugene C. Conway, E. Wilkes Stranch, and John M. Boland, the Court must deny their motion to intervene. The claims of those pilots are different from the claims of the other pilots. Conway, Stranch, and Boland have not shown that they have "an interest relating to the property or transaction which is the subject of the action" and that they are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest." Fed. R. Civ. P. 24(a). Thus, they are not en-

titled to intervene of right. Furthermore, they do not meet the requirements for permissive intervention because the addition of new issues at this stage of the litigation would unfairly prejudice the original parties. The motion to intervene of Conway, Stranch, and Boland therefore must be denied.

With respect to the remaining issues, the Court will deny ALPA's suggestion of mootness and grant plaintiff Pedrazzini's unopposed motion to withdraw. The Court notes that all other pending motions were resolved at the status hearing on November 23, 1994.

Accordingly, it is this 8th day of December, 1994,

ORDERED that defendant ALPA's suggestion of mootness be, and hereby is, denied; and it is further

ORDERED that defendant ALPA's suggestion of mootness be, and hereby is, denied; and it is further

ORDERED that the claims of plaintiff Donald Pedrazzini be, and hereby are, dismissed with prejudice; and it is further

ORDERED that plaintiffs' motion to have 154 pilots intervene as plaintiffs be, and hereby is, granted in part and denied in part. Plaintiffs' motion to intervene is denied with respect to Eugene C. Conway, E. Wilkes Stranch, and John M. Boland, and granted with respect to the remaining 151 pilots.

/s/ Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
United States District Judge

[Filed Dec. 8, 1994]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted]

SECOND AMENDMENT TO THE COMPLAINT

Pursuant to Rules 15 and 24, the original and intervening Plaintiffs amend the Complaint, as stated in this Second Amendment, by adding to the original Complaint and the First Amendment to the Complaint the following:

87. USAir, Inc. ("USAir") is a corporation, which does business within the District of Columbia, and operates as a common carrier by air, engaged in interstate and foreign commerce. Pursuant to Section 201 of RLA (45 U.S.C. Section 181), USAir and its pilots are covered by the provisions of subchapter I (except Section 153) of RLA.

88. ALPA is the union which is the collective bargaining representative of pilots employed by USAir.

89. ALPA and USAir have in effect a collective bargaining agreement related to USAir pilots, which includes a "Union Security Agreement" permitted under Section 2 Eleventh (a) of RLA (45 U.S.C. Section 152 Eleventh (a)).

90. As is pertinent to this Action, the Union Security Agreement provisions of the Delta and USAir agreements are comparable.

91. The names, addresses, airline employer, and union/nonunion status of each of the intervening Plaintiffs are set forth below:

NAME/ADDRESS	CARRIER	UNION/ NONUNION
1. Ted M. Abbott 633 Ralls Rd. Hogansville, GA 30230	Delta	nonunion
2. Neal E. Alberts 2086 Truett Cir. Thousand Oaks, CA 91360	Delta	nonunion
3. Thomas A. Allen 7084 Pleasants Vly. Rd. Vacaville, CA 95688	Delta	nonunion
4. Clarence A. Anderson 2332 McCrea Rd. Thousand Oaks, CA 91362	Delta	nonunion
5. J. Eric Anderson 3086 Fawn Drive Park City, UT 84060	Delta	nonunion
6. Donald E. Asay 33 Ave. of Champions Nicholasville, KY 40356	Delta	nonunion
7. David J. Baccitich 14451 Heights Dr. Tustin, CA 92680	Delta	nonunion
8. Walter W. Baitis 4467 Karls Gate Dr. Marietta, GA 30068	Delta	nonunion
9. R.B. Barnes Lookout Farm RR-1, Box 126 Rumney, NH 03266	Delta	nonunion
10. David Bauer 15901 N.E. 133 St. Redmond, WA 98052	Delta	nonunion
11. Allan G. Blake 12SC11 200 Ave. S.E. Issaquah, WA 98027	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
12. John M. Boland 1539 Flintridge Rd. Florence, KY 41042	Delta	union
13. Dale N. Boschetto 11408 N.E. 98 Cir. Vancouver, WA 98662	Delta	nonunion
14. Richard A. Breems 1700 S.E. 161 Pl. Vancouver, WA 98684	Delta	nonunion
15. John C. Brittenhaus 365 Mesa Ave. Newbury Park, CA 91320	Delta	nonunion
16. Robert Brushwyler 10143 Hillcrest Rd. Copertino, CA 95014	Delta	nonunion
17. G.D. Burson 33792 Kinkerry La. San Juan Capistrano, CA 92675	Delta	nonunion
18. Cornelius J. Carney 15706 N.E. 36 St. Vancouver, WA 98682	Delta	nonunion
19. Alvin W. Chamberlin 900—130 Ave. N.E. Bellevue, WA	Delta	nonunion
20. Maurice Cloutier 48 Aspengrove Dr. East Apt. H-1 Evanston, WY 82930	Delta	nonunion
21. Raymond Dale Compton P.O. Box 5842 Incline Village, NV 89450	Delta	nonunion
22. Eugene C. Conway 52 Trotter Cir. Sewickley, PA 15143	USAir	union

NAME/ADDRESS	CARRIER	UNION/ NONUNION
23. Peyton H. Cook, Jr. P.O. Box 1396 McDonough, GA 30253	Delta	nonunion
24. William S. Cook 629 12 St. Manhattan Beach, CA 90266	Delta	nonunion
25. Marcus Covington, Jr. Rt. 1, Box 281 Rayville, LA 71269	Delta	nonunion
26. James J. Crayton 1431 Crownhill Dr. Arlington, TX 76012	Delta	nonunion
27. Frederick T. Darvill 920 Ocean Bluff La. Coupeville, WA 98239	Delta	nonunion
28. Gale Charles Davis 22325 Blueberry La. Lake Forest, CA 92630	Delta	nonunion
29. Charles P. Dawsen 9110 Ridgeland Dr. Miami, FL 33157	Delta	nonunion
30. Brian Decker 10 Kiersted Ave. Kingston, NY 12401	Delta	nonunion
31. Timothy L. Dermer 6446-75 E. Trailridge Cir. Mesa, AZ 85205	Delta	nonunion
32. Joseph H. DeVelis 11 Ship Rock Rd. N. Hampton, NH 03862	Delta	nonunion
33. W. David Doiron 332 Aepli Tempe, AZ 85282	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
34. James V. Dunlap 1967 Port Claridge Newport Beach, CA 92660	Delta	nonunion
35. John D. Durris P.O. Box 2624 Peachtree City, GA 30269	Delta	nonunion
36. James S. Ehmer 12514 Danbury Way Rosemount, MN 55068	Delta	nonunion
37. Joseph M. Elder 265 Brandon Mills Cir. Fayetteville, GA 30214	Delta	nonunion
38. Jerry D. Elmore 1623 59 Ave. Gig Harbor, WA 98335	Delta	nonunion
39. Bruce E. Elmquist 140 Terrace Rd. Sanger, TX 76266	Delta	nonunion
40. William T. Erwin 12719 Iss. Hobart Rd. Issaquan, WA 98027	Delta	nonunion
41. James T. Ferguson 921 Creek Crossing Coppell, TX 75019	Delta	nonunion
42. Roger Ferris 4855 W. Mission Blvd. Ontario, CA 91762	Delta	nonunion
43. Ferdinand Fletcher 2262 Soledad Rancho Rd. San Diego, CA 92109	Delta	nonunion
44. G.R. Fow 5201 S.R. 11 DeLeon Springs, FL 32130	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
45. R. Dell Fuller P.O. Box 3359 Park City, UT 84060	Delta	nonunion
46. Alan L. Gaines 11320 Marjon Dr. Nevada City, CA 95959	Delta	nonunion
47. Gary Gebo 3214 38th Ave. N.W. Gib Harbor, WA	Delta	nonunion
48. James A. Gibbons 2535 Kinney Lane Reno, NV 89511	Delta	nonunion
49. Patrick M. Glazier 8500 Nottingwood Dr. Cincinnati, OH 45255	Delta	nonunion
50. Richard D. Grantham P.O. Box 6755 Laguna, CA 92607	Delta	nonunion
51. Dennis E. Creulich 463 Main St. P.O. Box 159 Oley, PA 19547	Delta	nonunion
52. Gary Guilliat Suite 166 930 Tahoe Blvd., Unit 802 Incline Vill., NV 89451	Delta	nonunion
53. John F. Gullledge 18 Oakmont Coto de Caza, CA 92679	Delta	nonunion
54. George S. Haines 200 Landing Rd. #90 Hampton, NH 03842	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
55. Michael T. Hannan 1642 East 7080 So. Salt Lake City, UT 84121	Delta	nonunion
56. Barry W. Harman 7838 River Oaks Cir. Sandy, UT 84093	Delta	nonunion
57. George L. Harmon 2296 Valleyfield Ave. Thousand Oaks, CA 91360	Delta	nonunion
58. Douglas R. Harper 28 Hearthside Cir. Bedford, NH 03110	Delta	nonunion
59. John C. Harrison 2280 Glen Ellen Cir. Sacramento, CA	Delta	nonunion
60. James C. Harwood 19320 Orange Ave. Sonoma, CA 95476	Delta	nonunion
61. Harvey L. Hayden P.O. Box 117 Glen, NH 03838	Delta	nonunion
62. George Hector 2811 Desirae Chickasha, OK 73018	Delta	nonunion
63. John Hemminger 1630 900 St. Harlan, IA 51537	Delta	nonunion
64. L.R. Hern 3610 Patterstone Dr. Alpharetta, GA 30202	Delta	nonunion
65. Robert W. Hobbs 364 South Shore Rd. New Durham, NH 03855	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
66. Harry F. Houdeshel 9091 Canyon Gate Rd. Sandy, UT 84093	Delta	nonunion
67. Willard F. Ice 4875 S. Mountain La. Salt Lake City, UT 84124	Delta	nonunion
68. Dominic M. Insogna 2056 McCrea Rd. Thousand Oaks, CA 91362	Delta	nonunion
69. John P. Jenkins 1091 Briar Lakes Rd. Watkinsville, GA 30677	Delta	nonunion
70. Peter G. Just 657 W. Ramsgate Rd. Farmington, UT 84025	Delta	nonunion
71. Robert Kane HC 65- Box 92 Cloudland, GA 30731	Delta	nonunion
72. Arthur L. Knowles Rt. 3, Box 132 Jacksboro, TX 76458	Delta	nonunion
73. Gordon B. Kuntz 7960 W. Lone Mountain Rd. Las Vegas, NV 89129	Delta	nonunion
74. Edouard W. Lacroix, Jr. 7 Dennett Rd. Marblehead, MA 01945	Delta	nonunion
75. Dominic Lemma 903 Keswick Cincinnati, OH 45230	Delta	nonunion
76. Leslie C. Long 139 Chaparral East Denton, TX 76208	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
77. Robert G. Lyon, Jr. 19221 Lyon Ranch Rd. Sonoma, CA 95476	Delta	nonunion
78. Donald D. MacEachern 25 Congressional Drive Yarmouthport, MA 02675	Delta	nonunion
79. Peter E. Martin RR 11, Box 3 Laconia, NH 03246	Delta	nonunion
80. Donald E. Massey 505 Chippendale Dr. Rockwall, TX 75087	Delta	nonunion
81. Jack B. McBride 1625 Welcome Rd. Newnan, GA 30263	Delta	nonunion
82. Joe C. McDole 3080 Crestline Dr. Park City, UT 84060	Delta	nonunion
83. William A. McGaw 1554 N. Sweetwater Farmington, UT 84025	Delta	nonunion
84. Michael D. McGibney 1221 Green Valley Rd. Napa, CA 94558	Delta	nonunion
85. Gary R. McHargue 5745 Hidden Brook Ct. Westlake, Vill., CA 91362	Delta	nonunion
86. Dane W. McNeil 438 N. 950 E. Orem, UT 84057	Delta	nonunion
87. Charles R. Miller 1520 Highway 212 Conyers, GA 30208	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
88. Dale E. Miller 33434 11 Pl. S.W. Federal Way, WA 98023	Delta	nonunion
89. Ronald A. Morin 1 Pinewood Rd. P.O. Box 1474 Manchester, MA 01944	Delta	nonunion
90. C. Richard Morrow 263 Westchester Dr. Griffin, GA 30223	Delta	nonunion
91. Robert M. O'Brien, Jr. P.O. Box 100 Brooks, GA 30205	Delta	nonunion
92. Winthrop B. Orgera 30661 Marbella Vista San Juan Capistrano, CA 92675	Delta	nonunion
93. Keith E. Parker 1716 Baron Ct. Daytona Beach, FL 32124	Delta	nonunion
94. Paul E. Paulsen 7 Sandia Heights Dr. N.E. Albuquerque, NM 87122	Delta	nonunion
95. Dale F. Peel P.O. Box 681887 Park City, UT 84068	Delta	nonunion
96. Joseph A. Peterman 190 Ford Rd. #377 Ukiah, CA 95482	Delta	nonunion
97. Larry W. Peterson 2810 Lindgren La. Maple Plain, MN 55359	Delta	nonunion
98. William W. Peterson 21 Snowstar La. Samay, UT 84092	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
99. Patrick A. Pettyjohn 4809 Westhaven Arlington, TX 76017	Delta	nonunion
100. James R. Pittman 5737 Old Hwy 395N Carson City, NV 89704	Delta	nonunion
101. Thomas J. Prosch 7951 Mustang Loop Rd. Park City, UT 84060	Delta	nonunion
102. George S. Pupich 411 Lakewood Cir. Apt. C-301, Mox 169 Colorado Springs, CO 80910	Delta	nonunion
103. John C. Rector 1540 Rosita Dr. Las Vegas, NV 89123	Delta	nonunion
104. Terril J. Richardson P.O. Box 680201 Park City, UT 84068	Delta	nonunion
105. Charles E. Robinson P.O. Box 222 Ahwahnee, GA 93601	Delta	nonunion
106. Gordon G. Rogers 57 E. Hillside Ave. Salt Lake City, UT 84103	Delta	nonunion
107. Lenard A. Rogers 10290 N.W. 9 St. Cir. Apt. 508 Miami, FL 33172	Delta	nonunion
108. Allan H. Roy 12 Via Calandria San Clemente, CA 92672	Delta	nonunion
109. Melvin A. Rozema 426 No. 400 East Centerville, UT 84014	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
110. James P. Scanlon 27251 Calle del Cid Mission Viejo, CA 92691	Delta	nonunion
111. Robert P. Scheinblum P.O. Box 680243 Park City, UT 84068	Delta	nonunion
112. N.E. Schulze 3680 Schooner Ridge Alpharetta, GA 30202	Delta	nonunion
113. John M. Sharp P.O. Box 1062 Boca Grande, FL 33921	Delta	nonunion
114. Kerin L. Shaughnessey RR 2, 606C Crockett Cir. New London, NH 03257	Delta	nonunion
115. Robert K. Shepherd 1900 Galaxy Dr. Newport Beach, CA 92660	Delta	nonunion
116. Gary D. Simmons Box 416-4 Chapman Ave. Oak Bluffs, MA 02557	Delta	nonunion
117. David F. Smith 274 Summer St. Salt Lake City, UT 84116	Delta	nonunion
118. Robert W. Spielman 250 Riverbend Dr. Reno, NV 89523	Delta	nonunion
119. Dale A. Sticka 1300 Chatsworth Ct. Callelyville, TX 76034	Delta	nonunion
120. Murray V. Stookey 19905 S.E. 424th Enuinclaw, WA 98022	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
121. E. Wilkes Stranch 4009 Woodgrove La. Winston Salem, NC 27104	USAir	nonunion
122. Larry J. Taylor 1090 Hardeman Mill Rd. Madison, GA 30650	Delta	nonunion
123. John S. Thompson 90 Hickory Hill Dr. Oxford, GA 30267	Delta	nonunion
124. Donald L. Thorn 7379 Shepard Mesa Carpinteria, CA 93013	Delta	nonunion
125. Richard Tichacek 15767 Echo Hills Dr. Fountain Hills, AZ 85268	Delta	nonunion
126. James A. Tidwell 744 E. Shady Tree Ct. Salt Lake City, UT 84106	Delta	nonunion
127. Michael H. Uhlenhop 2500 El Tonas Way Carmichael, CA 95608	Delta	nonunion
128. Edwin D. Uselmann 35601 N.E. 251 St. Ave. Yacolt, WA 98675	Delta	nonunion
129. Ernesto E. Valadez P.O. Box 646 Frisco, CO 80443	Delta	nonunion
130. John M. Valenzuela 625 Pine St. Oakdale, CA 95361	Delta	nonunion
131. Denis F. Waldron 4688 Township Ct. Marietta, GA 30066	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
132. Michael J. Walton 11208 N. St. Andrews Way Scottsdale, AZ 85254	Delta	nonunion
133. Robert W. Warner 5097 Olive Hill Rd. Fallbrook, CA 92028	Delta	nonunion
134. George B. Waterman Rt. 6, Box 560 Kemp, TX 75143	Delta	nonunion
135. Neal C. Watson Rt. 2, Box 146A Martin, GA 30557	Delta	nonunion
136. R. Taft Weaver 23480 Park Sorrento #209A Calabasas, CA 91302	Delta	nonunion
137. M.G. Wilson 3353 E. Tree Farm La. Salt Lake City, UT 84121	Delta	nonunion
138. Howard C. Wolf, Jr. 530 Heyward Cir. Marietta, GA 30064	Delta	nonunion
139. Michael N. Wood 15 Linden St. So. Hamilton, MA 01982	Delta	nonunion
140. H.S. Wright, III 905 Harvard Ave. E. Seattle, WA 98102	Delta	nonunion
141. Edward J. Wucik 4289 Country Garden Walk Kennesaw, GA 30144	Delta	nonunion
142. Warren B. Young 1021 Loma Vista Dr. Napa, CA 94558	Delta	nonunion

NAME/ADDRESS	CARRIER	UNION/ NONUNION
143. J.L. Armstrong 341 Longden Lane Solana Beach, CA 92075	Delta	nonunion
144. David L. Brinton P.O. Box 681185 Park City, UT 84068	Delta	nonunion
145. Jerald C. Burgess 192 Orange Park Redlands, CA 92374	Delta	nonunion
146. Robert D. Engel 1780 Wendy Way Reno, NV	Delta	nonunion
147. George W. Etter 1629 E. Palm Ave. #2 El Segundo, CA 90245	Delta	nonunion
148. Neil B. Fossum 630 N. Ironwood Way Gilbert, AZ 85234	Delta	nonunion
149. Don L. Fowler 4701 Canyon Trail No. #1605 Euless, TX 76040	Delta	nonunion
150. Nicholas Gravino 8800 S. Ocean Dr. #809 Jensen Beach, FL 34957	Delta	nonunion
151. Lester H. Ideker, Jr. 1525 Maplewood Court Woodstock, GA 30188	Delta	nonunion
152. John L. Lynch 253A Shoreview Ave. Cousins Is., ME 04096	Delta	nonunion
153. Einar J. Morgensen 1128 Edwards Road Greenville, SC 29615	Delta	nonunion
154. James Sorley 175N Summerview Court Layton, UT 84040	Delta	nonunion

92. The intervening Plaintiffs adopt as their claims the allegations in the original Complaint, the First Amendment to the Complaint, and this Second Amendment to the Complaint.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court grant relief as requested in the original Complaint, the First Amendment to the Complaint, and this Second Amendment to the Complaint.

Respectfully submitted,

/s/ Philip F. Hudock, Esq.
PHILIP F. HUDOCK, ESQ.
Bar No. 6130
Counsel for Plaintiffs
Suite 600
8150 Leesburg Pike
Vienna, VA 22182
(703) 883-8242

[Filed Feb. 22, 1995]

AMERICAN ARBITRATION ASSOCIATION

HEARING

16 673 00277 93DS

IN THE MATTER OF:
AIR LINE PILOTS ASSOCIATION
(Agency Fee Challenges—1992)
(170 Challengers)

Monday, January 24, 1994

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

Before: LOUIS ARONIN, ESQ.
Neutral Arbitrator

* * * *

[7] MR. HUDOCK: My name is Philip Hudock, I'm an attorney admitted to practice in the District of Columbia, as well as other jurisdictions. My office is located at 8150 Leesburg Pike, Vienna, Virginia. I am counsel for plaintiffs in a lawsuit in the United States District Court for the District of Columbia, [8] Civil Action No. 91-3161, captioned as *Miller, et al. v. Air Line Pilots Association, et al.*, which is an agency shop litigation under the Railway Labor Act.

I will enter a conditional appearance today on behalf of the five plaintiffs in that lawsuit.

In addition, the conditional appearance on behalf of 154 pilots who have filed through me a motion to intervene in the federal litigation. The motion to intervene has not been ruled upon by Judge Johnson, the judge assigned to the case.

Each of the 159 people are pilots currently employed by an airline which is represented by the Air Line Pilots Association.

The conditional appearance is conditioned upon certain rulings that Judge Johnson will be making in the litigation. I filed an injunction in the *Miller* litigation last week, asking that the court stay this proceeding today pending certain rulings, such as whether the intervenors will be allowed to intervene in the *Miller* suit or not, and whether or not this arbitration is considered a mandatory condition precedent to these pilots proceeding to [9] challenge agency shop fees.

I will note that the litigation was begun on December 12th, 1991, but has not reached the merits as to what agency shop fees are yet.

Ms. Ginsburg and I had a conference call with Judy Brown, who is Judge Johnson's secretary, this morning, and we were advised that the judge has denied the request for preliminary injunction. Neither Ms. Ginsburg nor I have a copy of the order. That's being prepared. So to the extent—we don't know what the grounds are or the reasons. One of our concerns was whether or not the judge felt that an injunction might inconvenience other persons present, but obviously no one else is present but me on behalf of pilots.

To identify the specific pilots, I will tender to the Arbitrator and to ALPA the cover page of the original complaint, which names the five original plaintiffs, and a second amendment to the complaint which is pending in court, which identifies the 154 intervenors.

* * * *

[22] MR. HUDOCK: May I raise some issues?

There was a conference call between the Arbitrator and Ms. Ginsburg and myself on November 30, 1993, which touched on, amongst other things, the ground rules for the arbitration. In that conference call, I asked the Arbitrator if discovery were allowed, and I understand that your response was that [23] there is no discovery in this arbitration, and I would like to have that on the record.

MR. ARONIN: You have it on the record, sir.

MR. HUDOCK: And I also asked that there would be advanced identification of witnesses or advanced identification of exhibits, and you advised that there would be no such advanced identification.

MS. GINSBURG: Arbitrator Aronin, I'd like to object to Mr. Hudock using this arbitration as a basis for laying testimony for his litigation. Of course, this arbitration is likely to appear in the litigation, but to the extent that we can limit this arbitration to its focus, I think we will get through the proceeding more quickly, and Mr. Hudock will have the evidence that he needs for his litigation without taking us all down whatever roads he likes to travel in order to create his record for the litigation.

MR. ARONIN: So far we have two statements, and I agree with both of those statements, and for the record, one, there is no discovery. Two, I did not require any advanced identification by ALPA of the [24] witnesses or the exhibits it would present.

* * * *